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No. 47]

NEW DELHI, SATURDAY, NOVEMBER 19, 1988/KARTIKA 28, 1910

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as
a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-Section (ii)

(रक्षा मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Ministries of the Government of India (other than Statutory Orders and Notifications Issued by the
Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 7 अक्टूबर, 1988

का.आ. 3420.—राष्ट्रपति, संविधान के अनुच्छेद 309 के परत्तुक और अनुच्छेद 148 के खण्ड (5) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और जहां तक भारतीय लेखा-परीक्षा और लेखा विभाग में कार्यरत व्यक्तियों का संबंध है, भारत के नियंत्रक महालेखा परीक्षक के परामर्श से मूल नियमों का और संशोधन करने के लिए निम्नलिखित नियम बनाने हैं. अर्थात् :—

1. (1) इन नियमों का संक्षिप्त नाम मूल (इसका) संशोधन नियम, 1988 है।

(2) ये राजपत्र में प्रकाशन की तारीख को प्रवक्त होंगे।

2. मूल नियमों के नियम 56 में, टिप्पण 4 से 6 तक को टिप्पण 5 से 7 के रूप में पुनः संवर्गिकृत किया जाएगा और इस प्रकार पुनः संवर्गिकृत टिप्पण 5 से 7 के पूर्व

निम्नलिखित टिप्पण अन्तःस्थापित किया जाएगा, अर्थात् :—

“टिप्पण 4—किसी राज्य सरकार के ऐसे सरकारी सेवक की दशा में, जिसे केन्द्रीय सरकार की सेवा में या पद पर स्थायी रूप से स्थानांतरित किया जाता है, या जो संबंधित प्रशासनिक प्राधिकारी की उचित अनुज्ञा के साथ उचित प्रणाली के माध्यम से अपनी स्वेच्छा से केन्द्रीय सरकार के अधीन कोई पद/सेवा प्राप्त करता है, या जो किसी राज्य सरकार की सेवा में छूटती किए जाने के पश्चात्, केन्द्रीय सरकार के अधीन पद/सेवा प्राप्त करता है, खंड (अ) और खंड (ट) में निर्दिष्ट “सरकारी सेवा” पद के अन्तर्गत राज्य सरकार के अधीन स्थायी, स्थानापन्न या अस्थायी हैसियत में, यदि कोई हो, की गई सेवा जिसके पश्चात् केन्द्रीय सरकार के अधीन अधिष्ठायी नियुक्ति हो, आयगी।”

[संख्या 25013/10/87-स्था. (क)]

ए. जयरामन, निदेशक

टिप्पण :—इस नियम का निम्नलिखित के अनुसार पहले संशोधन किया गया था :

1. वित्त मंत्रालय की अधिसूचना सं. एक. 12 (2) ई. वी (सी)/63 ता. 21-7-65

2. वित्त मंत्रालय की अधिसूचना सं. एफ. 7 (10)
ई.वी/66 तारीख 23-7-66।

3. वित्त मंत्रालय की अधिसूचना सं. एफ. 7(6)ई.
वी./68 तारीख 8-7-68।

4. वित्त मंत्रालय की अधिसूचना सं. एफ. 7 (14)
ई.वी/69 तारीख 17-5-69।

5. वित्त मंत्रालय की अधिसूचना सं. एफ. 7 (2)
ई.वी/69-1 तारीख 26-5-69।

6. वित्त मंत्रालय की अधिसूचना सं. 7 (14) ई. वी./-
67-1 तारीख 26-8-69।

7. कार्मिक विभाग की आदेश सं. 31/7/72-अ.भा.
से (iii) तारीख 22-5-73।

8. वित्त मंत्रालय की अधिसूचना सं. 7(7) ई. वी.
)/74 तारीख 7-2-75।

9. वित्त मंत्रालय की अधिसूचना सं. 7(8) ई. वी.
(ए)/77 तारीख 20-8-77।

10. गृह मंत्रालय, कार्मिक और प्रशा. सुधार विभाग
की अधिसूचना सं. 19017/7/79-स्था. (क) तारीख
30-11-79।

11. गृह मंत्रालय, कार्मिक और प्रशा. सुधार विभाग की
अधिसूचना सं. 25013/4/80-स्था. (क) तारीख 11-9-
81।

12. गृह मंत्रालय, कार्मिक और प्रशा. सुधार विभाग
की अधिसूचना सं. 15013/9/80-स्था. (क) तारीख
22-6-82।

13. गृह मंत्रालय, कार्मिक और प्रशा. सुधार विभाग
की अधिसूचना सं. 26012/14/83-स्था. (क) तारीख
11-10-83।

14. गृह मंत्रालय, कार्मिक और प्रशा. सुधार विभाग
की अधिसूचना सं. 25013/25/83-स्था. (क) तारीख
25-2-84।

15. कार्मिक और प्रशिक्षण विभाग की अधिसूचना सं.
25013/25/83-स्था. (क) तारीख 2-7-85।

MINISTRY OF PERSONNEL, P.G. AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 7th October, 1988

S.O. 1420.—In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution, and in consultation with the Comptroller and Auditor General of India in so far as persons serving in the Indian Audit and Accounts Department are concerned,

the President hereby makes the following rules further to amend the Fundamental Rules, namely :—

1. (1) These rules may be called the Fundamental (Second) Amendment Rules, 1988.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In rule 56 of the Fundamental Rules, Notes 4 to 6 shall be re-numbered as Notes 5 to 7, and before Notes 5 to 7 as so re-numbered, the following Note shall be inserted, namely:—

"Note 4—In case of a government servant belonging to a State Government who is permanently transferred to Central Government service or post, or secures a post/service under the Central Government on his own volition through proper channel with proper permission of the administrative authority concerned, or secures post/service under the Central Government after having been retrenched from the service of a State Government, the expression "government service" referred to in clauses (i) and (k) shall include service rendered under the State Government in a permanent, officiating or temporary capacity, if any, followed by a substantive appointment under the Central Government."

[No. 25013/10/87-Estt.(A)]

A. JAYARAMAN, Director (E)

Note : This rule was amended earlier as per details below :

1. Ministry of Finance Notification No. F. 12(2)-E.V/(C)/63 dated 21-7-65.

2. Ministry of Finance Notification No. F. 7(10)-E.V/66 dated 23-7-66.

3. Ministry of Finance Notification No. F. 7(6)-E.V/68 dated 8-7-68.

4. Ministry of Finance Notification No. F. 7(14)-E.V/67-I dated 17-5-69.

5. Ministry of Finance Notification No. 7(2)-E.V/69-I dated 26-5-69.

6. Ministry of Finance Notification No. 7(14)-E.V/67-I dated 26-8-69.

7. Department of Personnel Order No. 31/7/72-AIS III dated 22-5-73.

8. Ministry of Finance Notification No. 7(7)-E.V(A)/74 dated 7-2-75.

9. Ministry of Finance Notification No. 7(8)-E.V(A)/77 dated 20-8-78.

10. Ministry of Home Affairs, Department of Personnel & A.R. Notification No. 19017/7/79-Estt. (A) dated 30-11-79.

11. Ministry of Home Affairs, Department of Personnel & A.R. Notification No. 25013/4/80-Estt.(A) dated 11-9-81.

12. Ministry of Home Affairs, Department of Personnel & A.R. Notification No. 15013/9/80-Estt.(A) dated 22-6-82.

13. Ministry of Home Affairs, Department of Personnel & A.R. Notification No. 26012/14/83-Estt.(A) dated 11-10-83.

14. Ministry of Home Affairs, Department of Personnel & A.R. Notification No. 25013/25/83-Estt.(A) dated 25-2-84.

15. Department of Personnel & Training Notification No. 25013/25/83-Estt.(A) dated 2-7-85.

नई दिल्ली, 28 अक्टूबर, 1988

का. आ. 3421. केन्द्रीय सरकार, दिल्ली विशेष पुलिस स्थापना अधिनियम 1946 (1946 का अधिनियम सं. 25) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित अपराधों को ऐसे अपराधों के रूप में विनिर्दिष्ट करती है जिसका अन्वेषण दिल्ली विशेष पुलिस स्थापना द्वारा किया जाता है, अर्थात्:—

(क) भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 49) के अधीन अपराध ।

(ख) ऊपर वर्णित अपराधों में से एक या अधिक अपराधों के संबंध में उससे संसक्त प्रत्यक्ष, दुष्प्रेरण और षड्यंत्र तथा वैसे ही संयोजन के अनुक्रम में किए गए किसी अन्य अपराध या अपराधों के संबंध में ।

[सं. 228/40/88-ए.वो.डी.-II]

New Delhi, the 28th October, 1988

S.O. 3421.—In exercise of the powers conferred by section 3 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946) the Central Government hereby specifies the following offences as the offences which are to be investigated by the Delhi Special Police Establishment, namely:—

(a) Offences under Prevention of Corruption Act, 1988 (Act No. 49 of 1988).

(b) Attempts, abetments and conspiracies in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in the course of the same transaction.

[No. 228/40/88-AVD.II]

नई दिल्ली, 31 अक्टूबर, 1988

का. आ. 3422.—केन्द्रीय सरकार, दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित अपराधों को ऐसे अपराधों के रूप में विनिर्दिष्ट करती है, जिसका अन्वेषण दिल्ली विशेष पुलिस स्थापना द्वारा किया जाएगा, अर्थात्:—

(क) उत्तर प्रदेश गोवध निवारण अधिनियम, 1955 (1956 का उत्तर प्रदेश अधिनियम सं. 1) की धारा 3, धारा 5 और धारा 5क के साथ पठित, धारा 8 के अधीन दंडनीय अपराध ।

(ख) ऊपर वर्णित एक या अधिक अपराधों के संबंध में या उनसे संसक्त प्रत्यक्ष, दुष्प्रेरणों और षड्यंत्रों के संबंध में और उन्हीं तथ्यों से उत्पन्न होने वाले वैसे ही संयोजन के अनुक्रम में किए गए किसी अन्य अपराध या अपराधों के संबंध में ।

[सं. 228/36/88-ए.वो.डी. II(i)]

New Delhi, the 31st October, 1988

S.O. 3422.—In exercise of the powers conferred by section 3 of Delhi Special Police Establishment Act, 1946 (Act

No. 25 of 1946) the Central Government hereby specifies the following offences as the offences which are to be investigated by the Delhi Special Police Establishment namely:—

(a) Offences punishable under section 8 read with sections 3, 5 and 5A of the Uttar Pradesh Govadh Nivaran Adhiniyam, 1955 (The U.P. Prevention of Cow slaughter Act, 1955 being U.P. Act No. 1 of 1956).

(b) Attempts, abetments and conspiracies in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in the course of the same transaction, arising out of the same facts.

[No. 228/36/88-AVD. II(i)]

प्रदेश

का. आ. 3423.—केन्द्रीय सरकार, दिल्ली विशेष पुलिस स्थापना अधिनियम 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निम्नलिखित अपराधों की सहमति से दिल्ली विशेष पुलिस स्थापना के सदस्यों को शक्तियों और अधिकारियों का विस्तार निम्नलिखित अपराधों के अन्वेषण के लिए सम्पूर्ण मिज़ोरम राज्य पर करते हैं:—

(क) के. प्र. अध. 1 वि. पु. स्था. के सामने से संबंधित भारतीय दण्ड संहिता 1860 (1860 का 45) की धारा 120 ख और भ्रष्टाचार निवारण अधिनियम, 1947 (1947 का अधिनियम सं. 2) की धारा 5(1)(घ) के साथ पठित धारा 5(2) के अधीन दंडनीय अपराध, जो श्री एम. बागलिदाना, कार्यपालक इंजीनियर पी. एच. ई., ऐंजल के विरुद्ध अपराध सं. आर. सी. 2187-एस. एल. सी., तारीख 27-3-87 है ।

(ख) ऊपर वर्णित एक या अधिक अपराधों के संबंध में या उनसे संसक्त प्रत्यक्ष, दुष्प्रेरणों और षड्यंत्रों के संबंध में और उन्हीं तथ्यों से उत्पन्न होने वाले वैसे ही संयोजन के अनुक्रम में किए गए किसी अन्य अपराध या अपराधों के संबंध में ।

[सं. 228/6/87-ए.वो.डी.-II(i)]

ORDERS

S.O. 3423.—In exercise of the powers conferred by sub-section (1) of Section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946) the Central Government, with the consent of the State Government of Mizoram hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Mizoram for investigation of offence as hereunder:—

(a) Offences punishable under section 120B of Indian Penal Code, 1860 (45 of 1860) and section 5(2) read with section 5(1)(d) of Prevention of Corruption Act, 1947 (Act No. II of 1947) relating to

CBI SPE Case being Crime No. RC.2/87-SLC dated 27-3-87 against Shri M. Dawngliana, Executive Engineer, P.H.E., Aizawl.

- (b) Attempts, abetments and conspiracies in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in the course of the same transaction arising out of the same facts.

[No. 228/6/87-AVD.II(i)]

का. आ. 3424:—केन्द्रीय सरकार, दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 की अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मिजोरम राज्य सरकार की सहमति से, दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और अधिकारिता का विस्तार निम्नलिखित अपराधों के अन्वेषण के लिए सम्पूर्ण मिजोरम राज्य पर करती है:—

- (क) थाना ऐजाल, मिजोरम का अपराध सं. 24 (3) 85, तारीख 14-3-85 से संबंधित भारतीय दण्ड संहिता 1860 (1860 का 45) की धारा 120ब, 420, 467, 468, 471, 472, 473, 416 के अधीन दंडनीय अपराध, जो मिथ्या उत्पाद शुल्क अनुज्ञप्तियों द्वारा अन्य राज्यों से मिजोरम को भारत निमित्त विदेशी लिकर के अभिक्रियित आयात के बारे में जैमा-बाक के श्री थानसंग और 7 अन्य के विरुद्ध के. अ. व्यू. 1 वि. पु. स्था. अपराध मामला सं. आर. सी. 2/86-सी. बी. आई. सी. आई. यू. (सी) 1 ए सी यू. 7, तारीख 11-3-1986।

- (ख) ऊपर वर्णित एक या अधिक अपराधों के संबंध में या उनसे संसक्त प्रयत्नों, दुष्प्रेरणों और षड-यंत्रों के संबंध में और उन्हीं तथ्यों से उत्पन्न होने वाले वैसे ही संव्यवहार के अनुक्रम में किए गए किसी अन्य अपराध या अपराधों के संबंध में

[सं. 228/6/87-ए. बी. डी.-II (ii)]

S.O. 3424.—In exercise of the powers conferred by sub-section (1) of Section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946) the Central Government, with the consent of the State Government of Mizoram hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Mizoram for investigation of offences as hereunder:—

- (a) Offences punishable under sections 120B, 420, 467, 468, 471, 472, 473, 416 of Indian Penal Code, 1860 (45 of 1860) relating to Crime No. 24(3)85 dated 14-3-1985 of P. S. Aizawl Mizoram being CBI/SP/7 Crime Case No. RC-2185-CBI/CIU(C), ACU VII dated 11-3-1986 against Shri Thansanga of Zamabawk and 7 others in regard to alleged import of Indian made Foreign Liquor to Mizoram from other States by bogus excise permits.

- (b) Attempts, abetments and conspiracies in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in the course of the same transaction arising out of the same facts.

[No. 228/6/87-AVD.II(ii)]

नई दिल्ली, 1 नवम्बर, 1988

गुद्विपत्र

सा. आ. 3425:—भारत के राजपत्र के भाग-II, खण्ड-3 (ii), में पृष्ठ संख्या 2350 पर दिनांक 18-6-88 को प्रकाशित भारत सरकार, कामिक और प्रशिक्षण विभाग के दिनांक 27 मई, 1988 के आदेश का. आ. संख्या 1813 के अंग्रेजी एपान्तर की मद संख्या 37 में "लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का अधिनियम संख्या 43) की धारा 31, 32 के अधीन दंडनीय अपराध" के लिए "लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का अधिनियम संख्या 43) की धारा 31, 32 के अधीन दंडनीय अपराध" पढ़ा जाए।

[संख्या 228/16/87-ए. बी. डी.-II]

जी. सीतारामन, अध्वर सचिव

New Delhi, the 1st November, 1988

CORRIGENDUM

S.O. 3425.—In the order of the Government of India in the Department of Personnel and Training S.O. No. 1813 dated the 27th May, 1988, at page No. 2350 of the Gazette of India, Part II, Section 3(ii), published on 18-6-1988, in Item No. 37 of the English version, for "Offences punishable under section 31, 32 of the Representation of People Act, 1951 (Act No. 43 of 1951)", read "Offences punishable under section 31, 32 of the Representation of the People Act, 1950 (Act No. 43 of 1950)".

[No. 228/16/87-AVD.II]

G. SIFARAMAN, Under Secy.

वित्त मंत्रालय

(राजस्व विभाग)

नई दिल्ली, 18 अगस्त, 1988

(आय-कर)

का. आ. 3426:—आयकर अधिनियम, 1961 (1961 का 43) की धारा 193 के परन्तुक के खण्ड (iiख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा उक्त खण्ड (के प्रयोजनार्थ भारतीय निर्यात-आयात बैंक, बम्बई द्वारा जारी किए गए "11.00% नि. आ. बैंक बन्धपत्र—20003 (पाचवीं श्रृंखला)" को विनिर्दिष्ट करती है।

बशर्ते कि पृष्ठांकन अथवा वितरण द्वारा इस प्रकार के बन्धपत्रों के अन्तरण के मामले में उक्त परन्तुक के अन्तर्गत लाभ तभी स्वीकार्य होगा यदि अमरिती इस प्रकार के अन्तरण से 60 दिन की अवधि के अन्दर रजिस्टर्ड डाक द्वारा भारतीय निर्यात-आयात बैंक को सूचित करे।

[सं. 8106/का. सं. 275/100/88-आ. क. (व.)]

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 18th August, 1988

INCOME-TAX

S.O. 3426.—In exercise of the powers conferred by clause (iib) of the proviso to section 193 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the "11.00% Exim Bank Bonds-2003 (Fifth Series)", issued by the Export-Import Bank of India, Bombay for the purposes of the said clause :

Provided that the benefit under the said proviso shall be admissible in the case of transfer of such bonds by endorsement or delivery, only if the transferee informs the Export-Import Bank of India by registered post within a period of sixty days of such transfer.

[No. 8106/F. No. 275/100/88-IT(B)]

नई दिल्ली, 10 मितम्बर, 1988

(आयकर)

क्रा. प्रा. 3427.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 193 के परन्तुक के खण्ड (iiख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा उक्त खण्ड के प्रयोजनार्थ आवास विकास वित्त निगम लिमिटेड, बम्बई द्वारा जारी किए गए "12.5% आवास विकास वित्त निगम लिमिटेड बन्धपत्र—1998 (ख)" को विनिर्दिष्ट करती है।

बशर्ते कि पृष्ठांकित अथवा वितरण द्वारा इस प्रकार के बन्धपत्रों के अन्तरण के मामले में उक्त परन्तुक के अन्तर्गत लाभ तभी स्वीकार्य होगा यदि अन्तरिनी इस प्रकार के अन्तरण से 60 दिन की अवधि के अन्दर रजिस्टर्ड डाक द्वारा आवास विकास वित्त निगम लिमिटेड को सूचित करे।

[सं. 8105/फा. सं. 275/98/88-आ. क. (अ.)]

बा. नागराजन, निदेशक

New Delhi, the 10th September, 1988

INCOME-TAX

S.O. 3427.—In exercise of the powers conferred by clause (iib) of the proviso to section 193 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the "12.5 per cent HDFC Bonds—1998(B)" issued by the Housing Development Finance Corporation Limited, Bombay, for the purpose of the said clause :

Provided that the benefit under the said proviso shall be admissible in the case of transfer of such bonds, by endorsement or delivery, only if the transferee informs the Housing Development Finance Corporation Limited, by registered post within a period of sixty days of such transfer.

[No. 8105/F. No. 275/98/88-IT(B)]

B. NAGARAJAN, Director

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 6 अक्टूबर, 1988

(आय-कर)

क्रा. प्रा. 3428.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 120 को उपधारा (1) और उपधारा

(2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय प्रत्यक्ष कर बोर्ड एतद्द्वारा भारत सरकार, वित्त मंत्रालय, केन्द्रीय प्रत्यक्ष कर बोर्ड की दिनांक 30 मार्च, 1988 की अधिसूचना सं. आ. 358 (असा.) में निम्नलिखित संशोधन करती है अर्थात्—

उक्त अधिसूचना की अनुसूची में, क्रम सं. 14 तथा उसमें संबंधित प्रविष्टियों के लिए निम्नलिखित को रखा जाएगा, अर्थात्—

क्रम सं.	पदनाम	प्रधान कार्यालय	अंत्राधिकार
1	2	3	4
14	मुख्य आयुक्त (प्रशा.) मद्रास	मद्रास	आयकर आयुक्त तमिलनाडु-III मद्रास आयकर आयुक्त, तमिलनाडु-IV, आयकर आयुक्त, तमिलनाडु-V, मद्रास आयकर आयुक्त कोयंबटूर
14-क	मुख्य आयुक्त (तकनीकी) मद्रास	मद्रास	आयकर आयुक्त तमिलनाडु-I, मद्रास आयकर आयुक्त, तमिलनाडु-II, मद्रास आयकर आयुक्त, मदुरै आयकर आयुक्त (वसूली), मद्रास

यह अधिसूचना दिनांक 27 जुलाई, 1988 से लागू होगी।

[सं. 8117/फा.सं. 187/2/88-आ.क. (नि.-1)]

आनन्द किशोर अवर, सचिव

(Central Board of Direct Taxes)

New Delhi, the 6th October, 1988

INCOME-TAX

S.O. 3428.—In exercise of the powers conferred by sub-section (1) and sub-section (2) of section 120 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following amendments in the notification of the Government of India in the Ministry of

Finance, Central Board of Direct Taxes, No. S.G. 358 (A)
dated the 30th March, 1988, namely:-

In the Schedule to the said notification, for Sl. No. 14 and the entries relating thereto, the following shall be substituted, namely:—

(Department of Economic Affairs)
(Banking Division)

New Delhi, the 27th September, 1988

S.O. 3429.—In exercise of the powers conferred by sub-section (1) of Section 11 of the Regional Rural Banks Act, 1976 (21 of 1976), the Central Government hereby appoints Shri M. C. Julka as the Chairman of the Champaran Kshetriya Gramin Bank, Motihari and specifies the period commencing on the 20th September, 1988 and ending with the 30th September, 1991 as the period for which the said Shri Julka shall hold office as Chairman.

[No. F. 2-44/87-RRB]

का. आ. 3430 :—प्रादेशिक ग्रामीण बैंक अधिनियम, 1976 (1976 का 21) की धारा 11 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार श्री के. एन. नायर को जिनकी धारा 11 की उपधारा (1) के तहत चम्पारण क्षेत्रीय ग्रामीण बैंक मोतीहारी के अध्यक्ष के रूप में नियुक्ति की तीन वर्ष की पहली अवधि 30-9-87 को समाप्त हो गयी है, 1-10-87 से प्रारंभ होकर 19-9-88 को समाप्त होने वाली अवधि के लिए उक्त बैंक का पुनः अध्यक्ष नियुक्त करती है।

[संख्या एफ. 2-44/87—आर. आर. बी.]

S.O. 3430.—In exercise of the powers conferred by sub-section (2) of section 11 of the Regional Rural Banks Act, 1976 (21 of 1976), the Central Government hereby reappoints Shri K. N. Nair whose earlier tenure of three years appointment under sub-section (1) of section 11 had expired on 30th September, 1987 as the Chairman of Champaran Kshetriya Gramin Bank, Motihari for a further period commencing from 1st October, 1987 and ending with 19th September, 1988.

[No. F. 2-44/87-RRB]

का. आ. 3431 :—प्रादेशिक ग्रामीण बैंक अधिनियम, 1976 (1976 का 21) की धारा 11 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार श्री नारायण बेहरा को जिनकी धारा 11 की उपधारा (1) के तहत रुषिकुला ग्राम्य बैंक, बरहामपुर के अध्यक्ष के रूप में नियुक्ति की तीन वर्ष की पहली अवधि 30-4-88 को समाप्त हो गयी है, 1-5-88 से प्रारंभ होकर 16-8-88 को समाप्त होने वाली अवधि के लिये उक्त बैंक का पुनः अध्यक्ष नियुक्त करती है।

[सं. एफ. 2-16/88-आर आर बी]

S.O. 3431.—In exercise of the powers conferred by sub-section (2) of Section 11 of the Regional Rural Banks Act, 1976 (21 of 1976), the Central Government hereby reappoints Shri Narayan Behera whose earlier tenure of three years appointment under sub-section (1) of section 11 had expired on 30th April, 1988 as the Chairman of Rushikulya Gramya Bank, Berhampur for a further period commencing from 1st May, 1988 and ending with 16th August, 1988.

[No. F.2-16/88-RRB]

का. आ. 3432 :—प्रादेशिक ग्रामीण बैंक अधिनियम, 1976 (1976 का 21) की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एन.ए. आर. श्री ए. जी. सूर्यनारायण राव को अधि-

S. No.	Designation	Head-quarters	Jurisdiction
1	2	3	4
14.	Chief Commissioner Madras (Administration)	Madras.	Commissioner of Income-tax, Tamil Nadu-III, Madras.
			Commissioner of Income-tax, Tamil Nadu-IV Madras.
			Commissioner of Income-tax, Tamil Nadu-V Madras.
			Commissioner of Income-tax, Coimbatore.
14a.	Chief Commissioner (Technical)	Madras.	Commissioner of Income-tax, Tamil Nadu-I, Madras.
			Commissioner of Income-tax, Tamil Nadu-II, Madras.
			Commissioner of Income-tax, Madurai.
			Commissioner of Income-tax (Recovery), Madras."

2. This notification shall come into force on the 27th day of July, 1988.

[No. 8117/F. No. 187/2/88-IT (AI)]

ANAND KISHORE, Under Secy.

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 27 सितम्बर, 1988

का. आ. 3429 :—प्रादेशिक ग्रामीण बैंक अधिनियम, 1976 (1976 का 21) की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा श्री एम. सी. जुलका को चम्पारण क्षेत्रीय ग्रामीण बैंक, मोतीहारी का अध्यक्ष नियुक्त करती है तथा 20-9-88 से प्रारंभ होकर 30-9-91 को समाप्त होने वाली अवधि को उस अवधि के रूप में निर्धारित करती है जिसके दौरान श्री जुलका अध्यक्ष के रूप में कार्य करेंगे।

[संख्या एफ. 2-44/87—आर. आर. बी.]

कुलम, ग्राम्य बैंक, बम्बई का अध्यक्ष नियुक्त करती है तथा 17-8-88 से प्रारंभ होकर 31-8-91 को समाप्त होने वाली अवधि को उस अवधि के रूप में निर्धारित करती है जिसके दौरान श्री राव अध्यक्ष के रूप में कार्य करेंगे।

[संख्या एफ-12-6/88-आर. आर. बी.]

S.O. 3432.—In exercise of the powers conferred by sub-section (1) of Section 11 of the Regional Rural Banks Act, 1976 (21 of 1976), the Central Government hereby appoints Shri A. V. Suryanarayana Rao as the Chairman of the Rushikulya Gramya Bank, Berhampur and specifies the period commencing on the 17th August, 1988 and ending with the 31st August, 1991 as the period for which the said Shri Rao shall hold office as Chairman.

[No. F. 2—16/88-RRB]

नई दिल्ली, 2 नवम्बर, 1988

का. भा. 3433:—प्रादेशिक ग्रामीण बैंक अधिनियम 1976 (1976 का 21) की धारा 3 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा भारत सरकार की अधिसूचना में तत्कालीन वित्त मंत्रालय (राजस्व तथा बैंकिंग) संख्या एस. ओ. 220(ड.) दिनांक 7 मार्च, 1987 में पुनः निम्नलिखित संशोधन करती है, यथा:—

उक्त अधिसूचना में “रामनाथपुरम तिरुनेलवेली, पासुमपोन मुथुरामालिंगम” जिलों के शब्दों के स्थान पर “रामनाथपुरम पासुमपोन, मुथुरामालिंगम कामराजार, तिरुनेलवेली कट्टाबोम्मन तथा चिदाम्बरनार” शब्दों को प्रतिस्थापित किया जाएगा।

[संख्या एफ. 1(5)/85-आर. आर. बी.]

बी. बी. माथुर, अवसर सचिव

New Delhi, the 2nd November, 1988

S.O. 3433.—In exercise of the powers conferred by sub-section (2) of Section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), the Central Government hereby makes the following further amendment in the notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue and Banking) No. S.O. 220(E), dated the 7th March, 1977, namely:—

In the said notification, for the words “districts of Ramana-thapuram, Tirunelveli, Pasumpon Muthuramalingam and K. marajar”, the words “districts of Ramana-thapuram, Pasumpon Muthuramalingam, Kamarajar, Tirunelveli Kattabomman and Chidambaranar” shall be substituted.

[No. F. 1(5)/85-RRB]

V. B. MATHUR, Under Secy.

याणिज्य मंत्रालय

(मुख्य नियंत्रक, आयात-निर्यात का कार्यालय)

नई दिल्ली, 18 जुलाई, 1988

आदेश

का. भा. 3434:—गैसर्स चोकसन्स प्राइवेट लिमिटेड, बम्बई-400072 को सेकेंड्स/मेकेंड्स ग्रेड्स/डिफेक्टिव

कटिंग्स/शीट्स/क्वायलस/स्ट्रिप्स, किसी भी लेप में/सिक्शन कोटिङ/अनकोटिङ-200 भी. एस. के आयात के लिए 8,44,600/- रु. (आठ लाख, चौवालीस हजार छः सौ रुपये मात्र) का एक आयात लाइसेंस संख्या पी/एस/1984675 दिनांक 24-2-87 जारी किया गया था।

उक्त फर्म ने विनियम नियंत्रण प्रयोजनों के लिए उपर निश्चित लाइसेंस की अनुलिपि जारी करने के लिए इस आधार पर आवेदन किया है कि लाइसेंस की मूल विनियम नियंत्रण प्रति खो गई अथवा अस्थानस्थ हो गई है। पार्टी ने आगे यह भी बताया है कि लाइसेंस की मूल विनियम नियंत्रण प्रति को सीमा-शुल्क प्राधिकारी, बम्बई के पास पंजीकृत कराया गया था और इस तरह से सीमा शुल्क प्रयोजन प्रति के मूल्य का विष्कूल भी उपयोग नहीं किया गया है।

अपने तर्कों के समर्थन में लाइसेंस धारक ने नोटरी पब्लिक अधिवक्ता, बम्बई उच्च न्यायालय के सम्मुख स्टाम्प पेपर पर विधिवत शपथ लेकर एक शपथपत्र दाखिल किया है। तबनुसार मैं संतुष्ट हूँ कि आयात लाइसेंस की मूल विनियम नियंत्रण प्रति संख्या पी/एस/1984675, दिनांक 24-2-1987 फर्म द्वारा खो गई अथवा अस्थानस्थ हो गई है। समय-समय पर यथा संशोधित आयात (नियंत्रण) आदेश 1955, दिनांक 7-12-1955 की उपधारा (ग-ग) द्वारा प्रदत्त अधिकारों का प्रयोग करते हुए, मैं चोकसन्स प्राइवेट लिमिटेड, बम्बई को जारी उक्त मूल विनियम नियंत्रण प्रति सं. पी./एस/1984675, दिनांक 24-2-87 को एतद्वारा रद्द किया जाता है।

पार्टी को उक्त लाइसेंस की विनियम नियंत्रण प्रति की अनुलिपि अलग से जारी की जा रही है।

[सं० सप्लि/एन. 150/एम. एस. आई./ए. एम. 87/एस.-एल. एस.]

MINISTRY OF COMMERCE

(Office of the Chief Controller of Imports and Exports)

New Delhi, the 18th July, 1988

ORDERS

S.O. 3434.—M/s. Choksons Private Ltd., Bombay-400072 were granted an import licence No. P/S/1984675 dated 24th February, 1987 for Rs. 8,44,600 (Rupees Eight Lakhs forty four thousand and six hundred) for import of Seconds/Second Grades/Defective Cuttings/Sheets/Coils/Strips in any shape/Section coated/uncoated—200 MT.

The firm has applied for issue of Duplicate copy of Exchange Control purposes copy of the above mentioned licence on the ground that the original Exchange Control Copy of the licence has been lost or misplaced. It has further been stated that the Exchange Control copy of the licence was got registered with Bombay Customs Authority and as such the value of Customs Purpose copy has not been utilised at all.

In support of their contention, the licensee has filed an affidavit on stamped paper duly sworn in before a Notary Public Advocate High Court Bombay. I am accordingly satisfied that the original Exchange Control copy of import licence No. P/S/1984675 dated 24th February, 1987 has been lost or misplaced by the firm. In exercise of the powers conferred under sub-clause 9(cc) of the Import (Control) Order,

1955 dated 7th December, 1955 as amended the said original Exchange Control purposes copy No. P/S/1984675 dated 24th February, 1987 issued to M/s. Choksons Pvt. Ltd., Bombay is hereby cancelled.

A duplicate Exchange Control Purposes Copy of the said licence is being issued to the party separately.

[Suppl./S-150/SSI/AM. 87/SLS]

नई दिल्ली, 17 अगस्त, 1988

का. आ. 3435.—मुख्यालय की अनुपूरक लाइसेंसिंग समिति के अनुसार मैसर्स लक्ष्मी स्टील वर्क्स, एफ-136, मायापुरी, फेस-2, नई दिल्ली-110064 ने इस कार्यालय से 279 मी. टन कोटिड/प्लेटिड या अनकोटिड कंडीशन में किसी भी शेप/सेक्शन/फार्म में सभी प्लेट, रोलड उत्पादों के सेकिन्ड्स और डिफेक्टिव्स/सर्कलस/कटिंग्स, जो कहीं अन्यत्र वर्गीकृत न की गई हों, परन्तु इसमें 0.27 एम. एम. थिकनेस एण्ड थिनर सैकिन्ड/डिफेक्टिव कंडीशन के अनकोटिड कोल्ड रोलड शीट्स/कायल्स/स्ट्रिप्स शामिल नहीं हैं, के आयात के लिए 12,55,500/- रु. के लिए एक आयात लाइसेंस संख्या पी/एस/1096802, दिनांक 25-5-88 प्राप्त किया है।

उद्योग आयुक्त, दिल्ली प्रशासन, सी. पी. ओ. बिल्डिंग, कश्मीरी गेट, दिल्ली ने इस कार्यालय को एहतियात के तौर पर इस लाइसेंस को रद्द करने का अनुरोध किया है ताकि इसका आगे दुरुपयोग न किया जा सके।

मैं संतुष्ट हूँ कि मूल लाइसेंस, दिनांक 25-5-88 इस प्रयोजन को पूरा नहीं करेगा जिसके लिए उसे जारी किया गया था। अतः यथा संशोधित आयात-नियंत्रण अधिनियम, 1955, दिनांक 7-12-55 की धारा 9(क) एवं (घ) द्वारा प्रदत्त अधिकारों का प्रयोग करते हुए मैं एतद्वारा 12,55,500/-रु. के आयात लाइसेंस सं. पी/एस/1096802 दिनांक 25-5-88 को रद्द किया जाता है।

[फाइल सं. सप्लो/एस-1/100/एस. एम. आई./ए. एस/89/एस. एल. एस.]

New Delhi, the 17th August, 1988

S.O. 3435.—M/s. Laxmi Steel Works, F-136, Mayapuri, Phase-II, New Delhi-110064 have obtained Supplementary Import Licence No. P/S/1096802 dated 25th May, 1988 for Rs. 12,55,500 from this office for import of Seconds and defectives/circles/cuttings of all flat-rolled products in any shape/section/form in all coated/plated or uncoated condition not elsewhere classified, but excluding uncoated cold rolled sheets/coils/strips in seconds/defective condition of thickness 0.27 mm and thinner—279 M.Ts. as per Head Quarter Supplementary Licensing Committee.

The Commissioner of Industries, Delhi Administration C.P.O. Building, Kashmir Gate, Delhi has requested this office to cancel this licence as a precautionary measures to prevent misutilization of further licences.

I am satisfied that the original licence dated 25th May, 1988 will not serve the purpose for which the same was granted. Therefore, in exercise of the powers conferred under Sub Clause 9(a) & (d) of Import Control Order 1955 dated 7th December, 1955 as amended, I hereby cancel the

import licence No. P/S/1096802 dated 25th May, 1988 for Rs. 12,55,500.

[F. No. Suppl/S-1/100/SSI/AM. 89/SSI]

नई दिल्ली, 22 अगस्त, 1988

का. आ. 3436.—मैसर्स इण्डियन इक्वीपमेंट कारपोरेशन, बम्बई-93 को 430 मी. टन सभी प्रकार के सेकेन्ड्स/सेकेन्ड [ग्रेड्स/डिफेक्टिव कटिंग्स/कायल्स/शीट्स/क्रिमी भी शेप में स्ट्रिप्स/सेक्शन कोटिड/अनकोटिड के आयात के लिए 12,90,2000/- रुपये (बारह लाख और नब्बे हजार रुपये मात्र) मूल्य का एक आयात लाइसेंस सं. पी./एस/1984841, दिनांक 11-3-1987 दिया गया था।

फर्म ने उपर्युक्त लाइसेंस की अनुलिपि प्रति जारी करने के लिए इस आधार पर आवेदन किया है कि मूल आयात-लाइसेंस खो गया/अस्थानस्थ हो गया है। उन्होंने आगे यह बताया है कि मूल आयात लाइसेंस बम्बई सीमाशुल्क कार्यालय में रजिस्टर्ड था तथा उस पर पूर्ण मूल्य का उपयोग कर लिया गया है। अनुलिपि की आवश्यकता ए. एम-88 अवधि के लिए दुबारा परिचालन में सुविधा पाने के लिए है।

अपने तक के समर्थन में लाइसेंस धारक ने नोटरी पब्लिक एडवोकेट, ग्रेटर बम्बई के सम्मुख विधिवत शपथ लेकर स्टाम्प पेपर पर एक शपथ पत्र प्रस्तुत किया है। तबनुसार मैं संतुष्ट हूँ कि मूल लाइसेंस सं. पी./एस./1984841, दिनांक 11-3-87 फर्म द्वारा खो गया है या अस्थानस्थ हो गया है। समय-समय पर पयात्तशोधित आयात-नियंत्रण अधिनियम, 1955 दिनांक 1-12-1955 की धारा 9 (ग ग) के तहत प्राप्त अधिकारों का प्रयोग करते हुए मैं इण्डियन इक्वीपमेंट कारपोरेशन, बम्बई को जारी किए गए उपर्युक्त मूल आयात लाइसेंस सं. पी./एस/1984831 दिनांक 11-3-87 को एतद्वारा रद्द किया जाता है।

पार्टी को उपर्युक्त आयात लाइसेंस की अनुलिपि प्रति अलग से जारी की जा रही है।

(फाइल सं. सप्लो/एस-9/333/एस एस आई/ए एस 87/एस एल एस)

एस. कुर्ज़र, उप मुख्य नियंत्रक, आयात-निर्यात कृते मुख्य नियंत्रक, आयात-निर्यात

New Delhi, the 22nd August, 1988

S.O. 3436.—M/s. Indian Equipment Corporation Bombay-93 were granted an Import Licence No. P/S/1984841 dated 11-3-87 for Rs. 12,90,000 (Rupees twelve lakhs and ninety thousand only) for import of All seconds/second grades/Defective cutting/Coils/Sheets/Strips in any shape/section coated/uncoated—430 MTs.

The firm has applied for issue of duplicate copy of above mentioned Import Licence on the ground that original Import Licence has been lost or misplaced. They have further stated that original import licence was registered with Bombay Custom House and is fully utilised. The duplicate copy is required for availing the facility of repeat operation for AM-88 period.

In support of their contention, the licensee has filed an affidavit on stamped paper duly sworn in before a Notary Public Advocate, Greater Bombay. I am accordingly satisfied that the original Import Licence No. P/S/1984841 dated 11-3-87 has been lost or misplaced by the firm. In exercise of the powers conferred under sub clause 9 (cc) of the Import Control Order 1955 dated 7-12-1955 as amended, the said original Import Licence No. P/S/1984841 dated 11-3-87 issued to M/s. Indian Equipment Corporation, Bombay is hereby cancelled.

A duplicate copy of the said Import Licence is being issued to the party separately.

[F. No. Suppl./S-9/333/SSI/AM-87/SLS]

S. KURIJ,
Dy. Chief Controller of Imports and Exports
for Chief Controller of Imports and Exports

खाद्य और नागरिक पूर्ति मंत्रालय

(खाद्य विभाग)

नई दिल्ली, 27 अक्टूबर, 1988

का.आ. 3437:—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 10 के उप-नियम (4) के अनुसरण में, खाद्य और नागरिक पूर्ति मंत्रालय, खाद्य विभाग के अधीन निम्नलिखित कार्यालय, जिसके

कर्मचारिवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है :—

1. भारतीय खाद्य निगम, आंचलिक कार्यालय, बम्बई
2. भारतीय खाद्य निगम, जिला कार्यालय, पूना
3. माडर्न फूड इंडस्ट्रीज (इंडिया) लि., बम्बई यूनिट, बम्बई।

[संख्या ई-11017/9/87-हिंदी]

उ. र. कुर्लेकर, निदेशक (प्र.)

MINISTRY OF FOOD & CIVIL SUPPLIES
(Department of Food)

New Delhi, the 27th October, 1988

S.O. 3437.—In pursuance of sub-rule 4 of rule 10 of the Rules, 1976, the Central Govt. hereby notifies the following offices under the administrative control of the Ministry of Food & Civil Supplies (Department of Food), the staff whereof have acquired the working knowledge of Hindi :—

1. Food Corporation of India, District Office, Bombay.
2. Food Corporation of India, District Office, Pune.
3. Modern Food Industries (India) Ltd., Bombay Unit, Bombay.

[No. E-11017/9/87-HINDI]

U. R. KURLEKAR, Director (Admn.)

भारतीय पुरातत्व सर्वेक्षण

संस्कृति विभाग

नई दिल्ली, 3 नवम्बर, 1988

(पुरातत्व)

का. आ. 3438:—केन्द्रीय सरकार ने, प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम, 1958 (1958 का 24) की धारा 4 की उपधारा (1) की अपेक्षानुसार भारत सरकार के संस्कृति विभाग (भारतीय पुरातत्व सर्वेक्षण) की एक अधिसूचना सं. का. आ. 1484, तारीख 28 अप्रैल, 1988 द्वारा, जो भारत के राजपत्र, भाग 2, खण्ड 3, उपखण्ड (ii), तारीख 7 मई, 1988 में प्रकाशित की गई थी, उक्त अधिसूचना की अनुसूची में विनिर्दिष्ट संस्मारक को राष्ट्रीय महत्व का घोषित करने के अपने आशय की दो मास की सूचना दी थी और उस अधिसूचना की एक प्रति उक्त संस्मारक के समीप एक सहजदृश्य स्थान पर लगा दी गई थी ;

और उक्त राजपत्र जनता को 9 मई, 1988 को उपलब्ध करा दिया गया था ;

और केन्द्रीय सरकार को जनता से कोई आक्षेप प्राप्त नहीं हुआ है ;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 4 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इसमें उपबद्ध अनुसूची में विनिर्दिष्ट प्राचीन संस्मारक को राष्ट्रीय महत्व का घोषित करती है।

अनुसूची

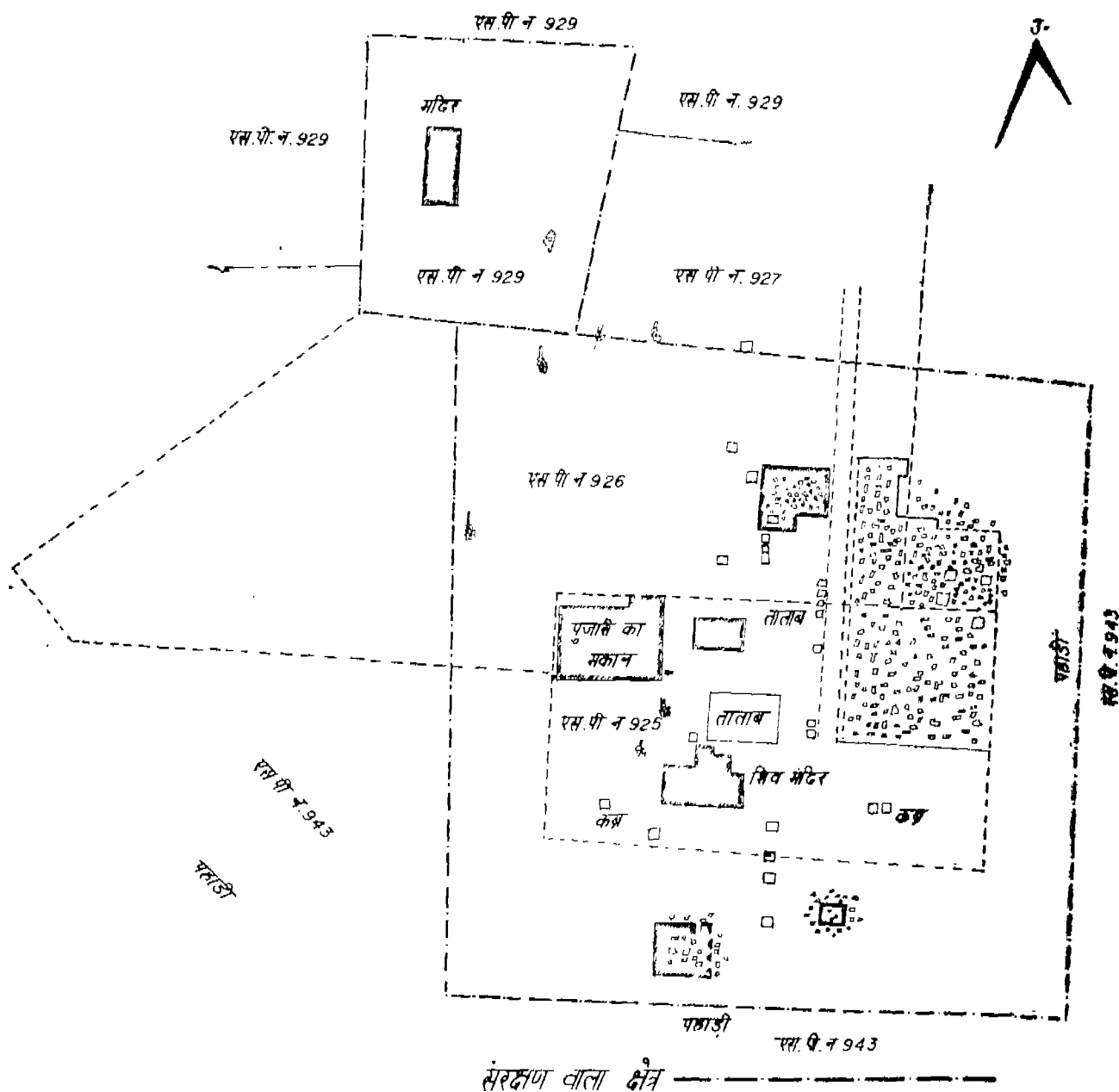
राज्य	जिला	तहसील	परिक्षेत्र	संस्मारक का नाम	संरक्षण के अधीन सम्मिलित किए गए राजस्व प्लॉट संख्यांक
1	2	3	4	5	6
मध्य प्रदेश	मुरैना	मुरैना	पड़ावली	नीचे पुनर्प्रस्तुत स्थल रेखांकन में यथादर्शित बटेसर स्थित मंदिरों का समूह	सर्वेक्षण प्लॉट सं. 925 और सर्वेक्षण प्लॉट सं. 926, 929 और 943 के भाग
क्षेत्र	सीमाएं		स्वामित्व		टिप्पणियां
7	8		9		10
2.097 हैक्टर	उत्तर : सर्वेक्षण प्लॉट सं. 927, 929 और 943 का भाग पूर्व : सर्वेक्षण प्लॉट सं. 943 का भाग		राजस्व विभाग मध्य प्रदेश		मुख्य मंदिर जिसमें पूजा होती है।

दक्षिण : सर्वेक्षण प्लॉट सं. 943
का भाग
पश्चिम : सर्वेक्षण प्लॉट सं. 926
और 943 का भाग।

बटैसर में मंदिर समूह का मान-चित्र

जिला और तहसील भुरेना, ग्राम - फटावली

10 0 10 20 30
पैमाना मीटर



ARCHAEOLOGICAL SURVEY OF INDIA

(Department of Culture)

New Delhi, the 3rd November, 1988

(ARCHAEOLOGY)

S.O. 3438.—Whereas by a notification of the Government of India in the Department of Culture (Archaeological Survey of India) No. S.O. 1404 dated the 28th April, 1988, published in Part II, Section 3, Sub-section (ii) of the Gazette of India in the Department of Culture (Archaeological Survey of India) gave two months' notice of the intention to declare the monument specified in the Schedule to the said notification to be of national importance and a copy of the notification was

affixed in a conspicuous place near the said monument as required by sub-section (i) of section 4 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

And, whereas, the said Gazette was made available to the public on the 9th May, 1988;

And, whereas, no objection from the public has been received by the Central Government;

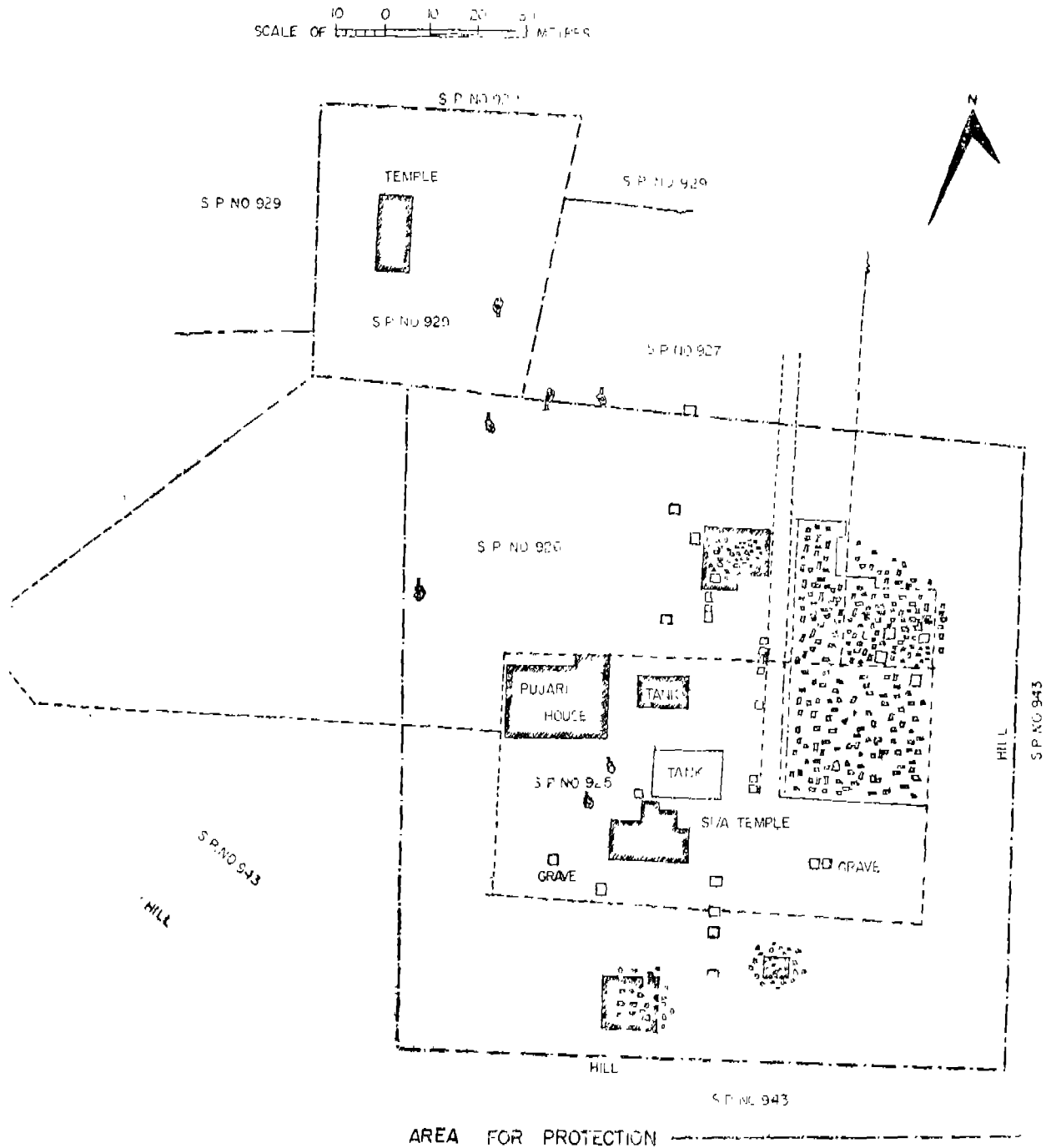
Now, therefore, in exercise of the powers conferred by sub-section (3) of section 4 of the said Act, the Central Government hereby declares the ancient monument specified in the Schedule annexed hereto to be of national importance.

SCHEDULE

State	District	Tehsil	Locality	Name of monument
1	2	3	4	5
Madhya Pradesh	Morena	Morena	Padhavali	Group of temples at Betwasi in the site plan reproduced below.
Revenue plot numbers included under protection.	Area	Boundaries	Ownership	Remarks
6	7	8	9	10
Survey plot number 925 and parts of survey plot numbers 926, 929 and 943.	2.097 hectares.	North.- Part of survey plot numbers 927, 929 and 943. East.- Part of survey plot number 943. South.- Part of survey plot number 943. West.- Part of survey plot numbers 926 and 943.	Revenue Department Government of Madhya Pradesh.	Main temples under worship

SITE PLAN OF GROUP OF TEMPLES AT BATESAR

DISTRICT & TAHSIL MORENA; VILLAGE - RADHAWALI



पुरातत्व

का. आ. 3439.—केन्द्रीय सरकार ने, प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम, 1958 (1958 का 24) की धारा 4 की उपधारा (1) की अपेक्षानुसार, भारत सरकार के संस्कृति विभाग (भारतीय पुरातत्व सर्वेक्षण) की एक अधिसूचना सं. का.आ. 928 तारीख 1 मार्च, 1988 द्वारा, जो भारत के राजपत्र, भाग 2, खण्ड 3, उपखण्ड (ii), तारीख 26 मार्च, 1988 में प्रकाशित की गई थी, उक्त अधिसूचना की अनुसूची में विनिर्दिष्ट प्राचीन स्थल को राष्ट्रीय महत्व का घोषित करने के अपने आशय की दो मास की सूचना दी थी और उक्त अधिसूचना की एक प्रति उक्त प्राचीन स्थल के समीप एक सहजदृश्य स्थान पर लगा दी गई थी;

और उक्त राजपत्र जनता को 28 मार्च, 1988 को उपलब्ध करा दिया गया था,

और केन्द्रीय सरकार को इस बात जनता से कोई आदेश प्राप्त नहीं हुआ है;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 4 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इससे उपाबद्ध अनुसूची में विनिर्दिष्ट प्राचीन स्थल को राष्ट्रीय महत्व का घोषित करती है।

अनुसूची

राज्य	जिला	परिक्षेत्र	स्थल का नाम	संरक्षण के अधीन सम्मिलित किए गए राजस्व प्लॉट संख्यांक	क्षेत्र	सीमाएं
1	2	3	4	5	6	7
गुजरात	कुच	ग्राम कोडा	सुर-कोटडा का प्राचीन स्थल	सर्वेक्षण प्लॉट सं० 57/1, 57/2, 58/2, 58/1, 61/क और नीचे प्रदर्शित स्थल रेखांक में यथादर्शित सर्वेक्षण प्लॉट सं. 593	7.4939 हेक्टर	उत्तर : सर्वेक्षण प्लॉट सं. 593 का शेष भाग। पूर्व : सर्वेक्षण प्लॉट सं. 59, 60 और सर्वेक्षण प्लॉट सं. 593 का शेष भाग। दक्षिण : सर्वेक्षण प्लॉट सं. 59 और सड़क। पश्चिम : सर्वेक्षण प्लॉट सं. 65, 64, 62/1 और 631।

स्वामित्व

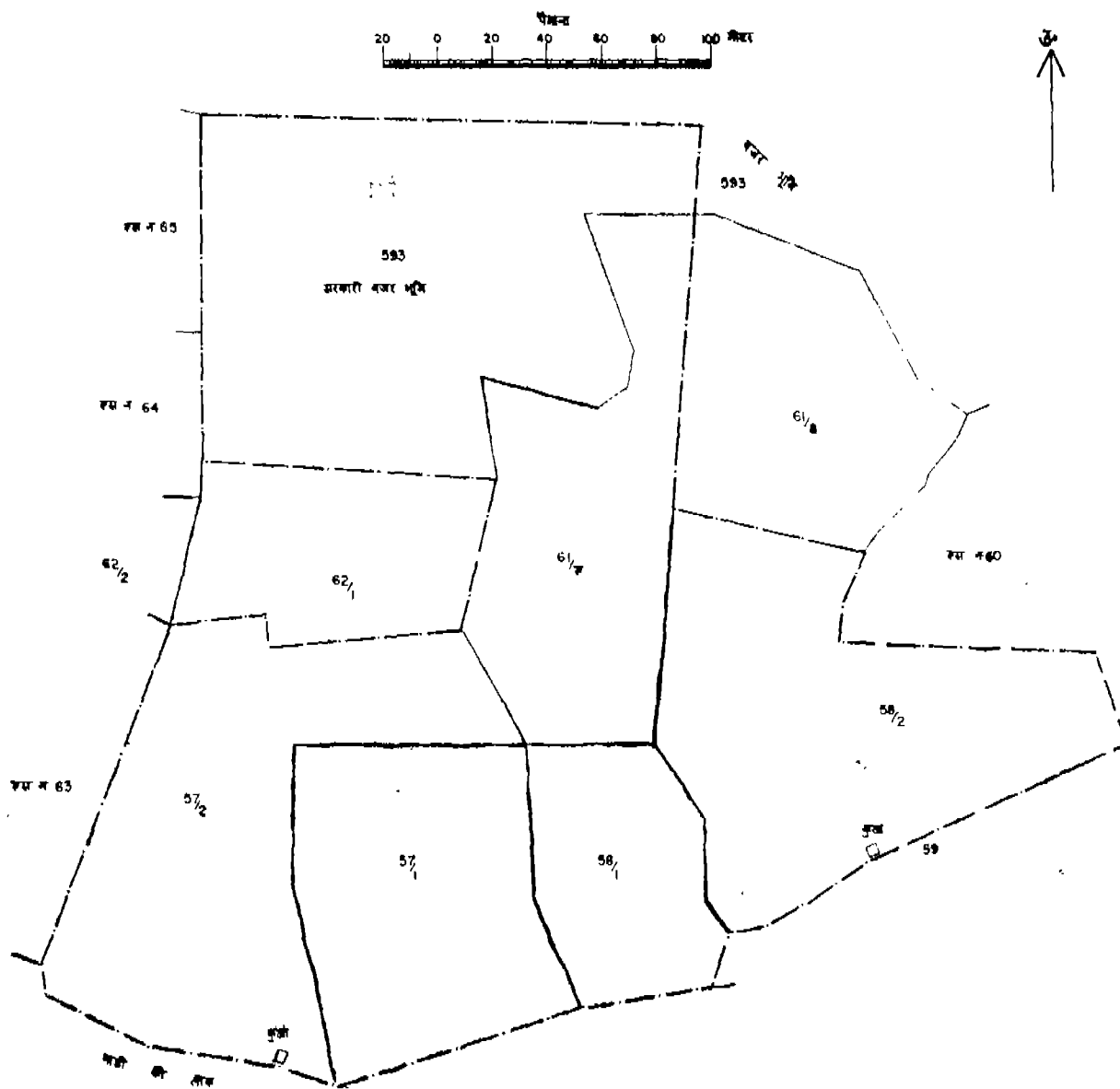
टिप्पणियां

8

9

सर्वेक्षण प्लॉट सं. 57/1 और 593, जो भारत सरकार के भारतीय पुरातत्व सर्वेक्षण के स्वामित्वाधीन है और सर्वेक्षण प्लॉट सं. 58/2 और 61/क जो निजी स्वामित्वाधीन है।

सूकौटडा टीले का मान-चित्र ग्राममोडा, तालुक: रापड़, जिला कच्छ, गुजरात



प्रमाण ३ किमी दूरस्थित है

[सं. 2/1/जी.प्रार./1/65-एम]
जगतपति जोशी, महानिदेशक

ARCHAEOLOGY

S.O. 3439.—Whereas by a notification of the Government of India in the Department of Culture (Archaeological Survey of India) No. S.O. 928, dated the 1st March, 1988 published in the Gazette of India, Part II, Section 3, Sub-Section (ii) dated the 26th March, 1988, the Central Government gave two month's notice of its intention to declare the ancient site specified in the Schedule to the said notification to be of national importance and a copy of the said notification was affixed in a conspicuous place near the said

ancient site as required by sub-section (1) of section 4 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

And whereas, the said Gazette was made available to the public on the 28th March, 1988;

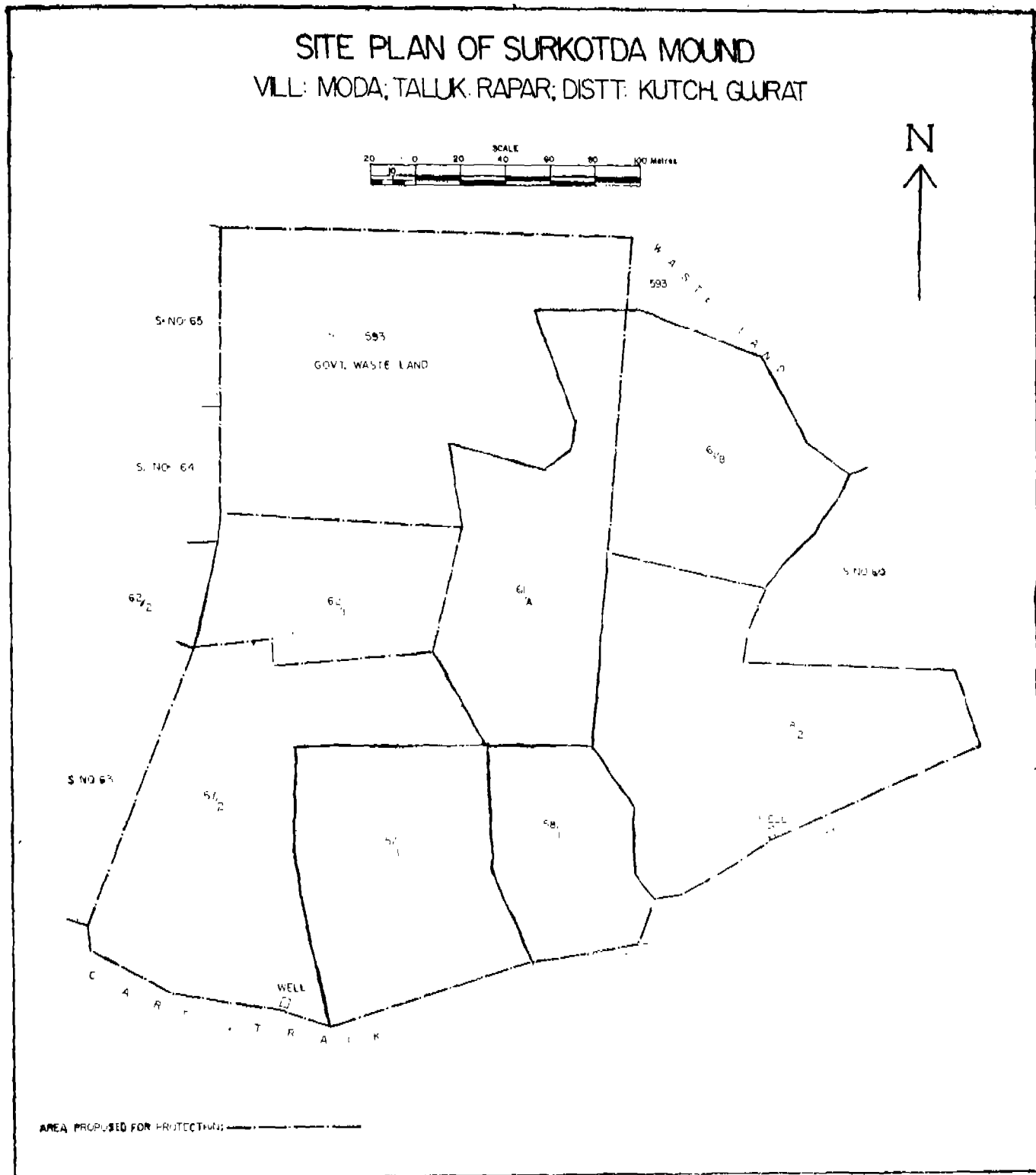
And whereas no objections have been received by the Central Government in this respect;

Now, therefore in exercise of the powers conferred by sub-section (3) of section 4 of the said Act, the Central Government hereby declares the ancient site specified in the Schedule annexed hereto to be of national importance.

SCHEDULE

State	District	Locality	Name of site	Revenue plot numbers included under protection
1	2	3	4	5
Gujarat	Kutch	Village Moda	Ancient site of Surkotda	Survey plot numbers 57/1, 57/2, 58/1, 58/2, 61/A and part of survey plot numbers 593 as shown in the site-plan reproduced below.

Area	Boundaries	Ownership	Remarks
6	7	8	9
7.4936 hectares	North.- Remaining portion of survey plot number 593. East.- Survey plot numbers 59, 60 and remaining portion of survey plot number 593. South.- Survey plot number 59 and road. West.- Survey plot numbers 65, 64, 62/1 and 63.	Survey plot numbers 57/1, 58/1 and 593 are under the ownership of the Government of India, Archaeological Survey of India and survey plot numbers 58/2 and 61/A are under private ownership.	



[No. 2/1/GR/1/65-M]
JAGAT PATI JOSHI, Director General

शहरी विकास मंत्रालय

नई दिल्ली, 21 अक्टूबर, 1988

का. आ. 3440.—दिल्ली नगर निगम के पार्षदों और एल्डरमैन ने—

- (1) 2-5-88 को संकल्प सं. 96 द्वारा श्री ओ. पी. वधवा को दिल्ली विकास प्राधिकरण में निगम के प्रतिनिधि के रूप में पुनः निर्वाचित किया।
- (2) 2 मई, 1988 को संकल्प सं. 96 द्वारा दिल्ली नगर निगम के प्रतिनिधि के रूप में श्री दीप चन्द शर्मा के स्थान पर श्री रामजी लाल को निर्वाचित किया।

2. दिल्ली विकास प्राधिकरण अधिनियम, 1957 (1957 का 61) के अनुच्छेद 3 के उप-अनुच्छेद (3) का धारा (ई) के साथ पठित उप-अनुच्छेद (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार स्वास्थ्य मंत्रालय की दिनांक 30 दिसम्बर, 1957 की अधिसूचना सं. एफ. 12/172 (57)-एल. एस. जो. में आगे और संशोधन करता है, यथा:—

अधिसूचना में मद सं. 5 तथा 6 के लिए प्रविष्टि “श्री दीप चन्द शर्मा और श्री ओ. पी. वधवा” के स्थान पर निम्नलिखित प्रविष्टि को प्रतिस्थापित किया जाए, यथा:—
“श्री ओ. पी. वधवा और श्री रामजी लाल”।

[सं. के-11011/22/78-डी. डी. I ए/II-बी]
स. प. सिंगल, निदेशक (दिल्ली प्रभाग)

MINISTRY OF URBAN DEVELOPMENT

New Delhi, the 21st October, 1988

S.C. 3440.—The Councillors and Aldermen of the Municipal Corporation of Delhi having :—

- (i) On the 2-5-1988 by Resolution No. 96 re-elected Shri O. P. Wadhwa as representative of the Corporation in Delhi Development Authority.
 - (ii) on the 2nd May, 1988 by Resolution No. 96 elected Shri Ramji Lal as representative of the MCD in place of Shri Deep Chand Sharma.
2. The Central Government in exercise of the powers conferred by sub-section (1) read with clause (c) of sub-section (3) of Section 3 of the Delhi Development Act, 1957 (61 of 1957) makes the following further amendment in the Ministry of Health Notification No. F. 12/172(57)-LSG dated 30th December, 1957, namely :—

In the Notification in Item Nos. 5 and 6 for the entry “Shri Deep Chand Sharma and Shri O. P. Wadhwa” the following entry shall be substituted, namely :—

“Shri O. P. Wadhwa and Shri Ramji Lal”.

[No. K-11011/22/78-DDIA/JIB]

S. P. SINGAL, Director (DD)

श्रम मंत्रालय

नई दिल्ली, 31 अक्टूबर, 1988

का.आ. 3441:—केन्द्रीय सरकार, अन्तर्राष्ट्रियक प्रवासी कर्मकार (नियोजन का विनियमन और सेवा शर्तें) अधिनियम, 1979 (1979 का 30) की धारा 12 द्वारा प्रदत्त 2830 GI/88—3.

शक्तियों का प्रयोग करते हुए, और भारत सरकार के श्रम मंत्रालय की अधिसूचना सं. 520(अ), तारीख 10 जून 1982 को अधिष्ठात करते हुए, नीचे की अनुसूची के स्तम्भ 1 में वर्णित अधिकारियों को उक्त अधिनियम की धारा 12 और 16 के प्रयोजनार्थ विनिर्दिष्ट प्राधिकारी विनिर्दिष्ट करती है जो अनुसूची के स्तम्भ 2 में यथा-विनिर्दिष्ट क्षेत्र/अधिकारिता के भीतर उक्त धारा के अधीन विनिर्दिष्ट प्राधिकारी की शक्तियों का प्रयोग और कृत्यों का निर्वहन करेंगे।

अनुसूची	
अधिकारी	अधिकारिता
1	2
सभी प्रादेशिक श्रम आयुक्त (केन्द्रीय)	सम्पूर्ण भारत

[फा.सं.एग-45011/2/88-एल.डब्ल्यू. (3)]

टिप्पण : मुख्य अधिसूचना भारत के राजपत्र अनाधारण का.आ.सं. 520(अ), ता. 10-6-82 द्वारा छपी गई।

MINISTRY OF LABOUR

New Delhi, the 31st October, 1988

S.D. 3441.—In exercise of the powers conferred by sub-section 12 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (30 of 1979) and in supersession of the Notification of the Government of India in the Ministry of Labour No. S.O. 520 (E), dated the 10th June, 1982, the Central Government hereby specifies the officers mentioned in column 1 of the Schedule below to be specified authority for the purposes of section 12 and 16 of the said act who shall exercise the powers and discharge the functions of the specific authority under the said section within the area/jurisdiction as specified in column 2 of the schedule.

SCHEDULE

Officers	Jurisdiction
1	2
all regional Labour Commissioners (Central).	Whole of India

[F. No. S-45011/2/88-LW (iii)]

Foot Note.—The Principal Notification was published vide S.O. No. 520(E) in the Extraordinary Gazette of India dated 10-6-82.

का.आ. 3442:—केन्द्रीय सरकार, अन्तर्राष्ट्रियक प्रवासी कर्मकार (नियोजन का विनियमन और सेवा शर्तें) अधिनियम, 1979 (1979 का 30) की धारा 20 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, और भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का.आ. 518(अ) तारीख 10 जून, 1982 को अधिष्ठात करते

हुए, नीचे की अनुसूची के स्तम्भ 1 में उल्लिखित अधिकारियों को निरीक्षक नियुक्त करती है, जो उक्त अधिनियम द्वारा या उसके अधीन निरीक्षकों को प्रदत्त शक्तियों का, उक्त अनुसूची के स्तम्भ 2 में यथाविनिर्दिष्ट क्षेत्र/अधिकारिता के भीतर, प्रयोग करेंगे।

अनुसूची

अधिकारी	अधिकारिता
1	2
(1) मुख्य श्रमायुक्त (केन्द्रीय)	सम्पूर्ण भारत
(2) संयुक्त मुख्य श्रम आयुक्त, (केन्द्रीय) नई दिल्ली	
(3) सभी उप मुख्य श्रम आयुक्त (केन्द्रीय)	
(4) सभी प्रादेशिक श्रम आयुक्त (केन्द्रीय)	
(5) सभी सहायक श्रम आयुक्त (केन्द्रीय)	
(6) सभी श्रम प्रवर्तन अधिकारी (केन्द्रीय)	

[फा. सं. एस.-45011/2/88-एल डब्ल्यू (ii)]

टिप्पणी :—मुख्य अधिसूचना भारत के राजपत्र असाधारण का.आ.सं. 518 (अ) ता. 10-6-82 के अधीन छापी गई।

S.O. 3442.—In exercise of the powers conferred by sub-section (1) of Section 20 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (30 of 1979) and in supersession of the Notification of the Government of India in the Ministry of Labour No. S.O. 518 (E), dated the 10th June, 1982, the Central Government hereby appoints officers mentioned in column 1 of the schedule below to be Inspectors who shall exercise the powers conferred on Inspectors by or under the said act within the area/jurisdiction as specified in column 2 of the said schedule.

SCHEDULE

Officers	Jurisdiction
1	2
(1) Chief Labour Commissioner (Central)	Whole of India.
(2) Joint Chief Labour Commissioner (Central), New Delhi.	
(3) All Deputy Chief Labour Commissioners (Central)	
(4) All Regional Labour Commissioners (Central)	
(5) All Assistant Labour Commissioners (Central)	
(6) All Labour Enforcement Officers (Central)	

[File No. S-45011/2/88-LW(ii)]

Foot Note:- The Principal Notification was published vide S.O. No. 518 (E) in the Extraordinary Gazette of India dated 10-6-82.

का.आ. 3443 :—केन्द्रीय सरकार, अन्तर्राष्ट्रियक प्रवासी कर्मकार (नियोजन का विनियमन और सेवा शर्त) अधिनियम, 1979 (1979 का 30) की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, और भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का.आ. 519(अ) तारीख 10 जून, 1982 को अधिकांत करते हुए, नीचे की अनुसूची के स्तम्भ 1 में उल्लिखित अधिकारियों को अपील अधिकारी नामनिर्दिष्ट करती है, जो उक्त अधिनियम द्वारा या उसके अधीन अपील अधिकारियों को प्रदत्त शक्तियों का, उक्त अनुसूची के स्तम्भ में यथाविनिर्दिष्ट क्षेत्र/अधिकारिता के भीतर, प्रयोग करेंगे।

अनुसूची

अधिकारी	अधिकारिता
1	2
सभी प्रादेशिक श्रम आयुक्त (केन्द्रीय)	सम्पूर्ण भारत

[फा.सं. एस-45011/2/88-एल.डब्ल्यू. (i)]

टिप्पणी :—मुख्य अधिसूचना भारत के राजपत्र, असाधारण का.आ.सं. 519 (अ), ता. 10-6-82 के अधीन छापी गई।

S. O. 3443—In exercise of the powers conferred by sub-section (1) of section 11 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (30 of 1979) and in supersession of the notification of the Government of India in the Ministry of Labour No. S.O. 519 (E), dated the 10th June, 1982, the Central Government hereby appoints officers mentioned in column 1 of the schedule below to be appellate Officers, who shall exercise the powers conferred on appellate Officers by or under the said Act within the area/jurisdiction as specified in column 2 of the said schedule.

SCHEDULE

Officers	Jurisdiction
1	2
All Regional Labour Commissioners (Central)	Whole of India

[File No. S-45011/2/88-LW(i)]

Foot Note:- The Principal Notification was published vide S.O. No. 519 (E) in the Extraordinary Gazette of India dated 10-6-82.

का.आ. 3444 :—केन्द्रीय सरकार, ठेका श्रम (विनियमन और उत्पादन) केन्द्रीय नियम, 1971 के नियम 3 के साथ पठित, ठेका श्रम (विनियमन और उत्पादन) अधिनियम, 1970 (1970 का 37) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत के राजपत्र, भाग 2,

खण्ड 3, उपखण्ड (ii), तारीख 11 जनवरी, 1986 में प्रकाशित, भारत सरकार के श्रम मंत्रालय की अधिसूचना सं. का.आ. 126, तारीख 26 दिसम्बर, 1985 का निम्नलिखित संशोधन करती है, अर्थात्:—

उक्त अधिसूचना में, क्र.सं. 11 और उससे संबंधित प्रविष्टियों के स्थान पर, निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात्:—

“श्री एस.एल. मेठी —रेलवे के कर्मचारियों
उपाध्यक्ष, का प्रतिनिधित्व करने
आल इंडिया रेलवे मेम्स फंडेशन, वाले।
सेन्ट्रल रेलवे क्वार्टर नं. 298,
ताप्ती रोड, भुसावल (महाराष्ट्र)।”

[संख्या एस-16014/30/87-एल.डब्ल्यू]
जगदीश जोशी, महा निदेशक (श्रम कल्याण)/
संयुक्त सचिव

नोट:—केन्द्रीय ईका श्रम सलाहकार बोर्ड का पुनर्गठन का.आ.सं. 126 तारीख 11-1-1986 के रूप में प्रकाशित किया गया था, तत्पश्चात् उसका अधिसूचना सं. का.आ. 3555 तारीख 11-10-1986 और अधिसूचना सं. एस-16014/30/87-एल.डब्ल्यू. तारीख 3-9-1987, 29-10-1987, 24-2-1988 और 28-7-1988 द्वारा संशोधन किया गया था।

S.O. 3445.—In exercise of the powers conferred by Section 3 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970), read with rule 3 of the Contract Labour (Regulation and Abolition) Central Rules, 1971, the Central Government hereby makes the following amendment in the Notification No. S.O. 126, dated the 26th December, 1985 of the Government of India, in the Ministry of Labour, published in the Gazette of India, Part II Section 3, Sub-Section (ii), dated the 11th January, 1986, namely:—

In the said notification, for serial No. 11 and the entries relating thereto, the following entry shall be substituted, namely:

“Shri S.L. Sathi, Vice President, —Representing
All India Railwaymen's Federation, employees in
Central Railways Quarter No. 298, Railways.
Tapti Road, Bhusaval (Maharashtra)”.

[F. No. S. 16014/30/87—LW]
JAGDISH JOSHI, Director General
(Labour Welfare)/Jt. Secy.

NOTE: The reconstitution of the Central Advisory Contract Labour Board was published as S.O. No. 126 dated 11-1-1986 subsequently amended vide Notification S.O. No. 3555 dated 11-10-86 and Notification No. S-16014/30/87-LW dated 3-9-1987, 29-10-1987, 24-2-1988 and 28-07-1988.

नई दिल्ली, 31 अक्टूबर, 1988

का.आ. 3445—खान अधिनियम, 1952 (1952 का 35) की धारा 5 की उपधारा (1) द्वारा प्रदत्त

शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार खान सुरक्षा के सहायक निदेशक (खनन), श्री दुर्गादास साहा को भ्रगले भ्रदंशों तक मुख्य खान निरीक्षक के अधीन खान निरीक्षक नियुक्त करती है।

[फाइल सं. ए-42011/15/88-खान-I]

New Delhi, the 31st October, 1988

S.O. 3445.—In exercise of the powers conferred under sub-section (1) of section 5 of the Mines Act, 1952 (35 of 1952) the Central Government hereby appoints Shri Durgadas Saha, Assistant Director of Mines Safety (Mining) as Inspector of Mines, subordinate to the Chief Inspector of Mines, until further orders,

[F. No. A-42011/15/88-M. I]

नई दिल्ली, 4 नवम्बर, 1988

का.आ. 3446:—खान नियम, 1955 के नियम 72 के उप नियम (2) के खंड (ख) के अनुसरण में, केन्द्रीय सरकार उक्त के प्रयोजगार्थ, भारतीय विद्या भवन, बम्बई द्वारा दिये जाने वाले औद्योगिक संबंध और कार्मिक प्रबंध व्यवस्था में स्नातकोत्तर डिप्लोमा को मान्यता प्रदान करती है।

[सं एस-66025/2/83(क) खान I]

राम तिलक पाण्डेय, उप सचिव

New Delhi, the 4th November, 1988

S.O. 3446.—In pursuance of clause (b) of sub-rule (2) of rule 72 of the Mines Rules, 1955, the Central Government hereby recognises for the purposes of the above rule, the Post-Graduate Diploma in Industrial Relations and Personnel Management awarded by the Bharatiya Vidya Bhavan, Bombay.

[No. S-66025/2/83(A)] [M-I]

R. T. PANDEY, Dy. Secy.

नई दिल्ली, 2 नवम्बर, 1988

का.आ. 3447:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स राजस्थान राज्य खनिज विकास निगम लि., जयपुर के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्म-कारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-10-88 को प्राप्त हुआ था।

New Delhi, the 2nd November, 1988

S.O. 3447.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Rajasthan State Minerals Development Corporation Limited, Jaipur and their workmen, which was received by the Central Government on the 27th October, 1988.

ANNEXURE

BEFORE SHRI G. S. KALRA, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL,
NEW DELHI

I. D. No. 68/87

In the matter of dispute between :

Workmen through The General Secretary,
Deri Base, Metal Mines Mazdoor Sangh,
Post Deri, Via. Abu Road,
Dist. Sirohi (Rajasthan)

Versus

The Managing Director,
M/s R S M D C Ltd; Udyog Bhawan,
Jaipur (Rajasthan),

2. The Project Manager,
M/s. R S M D C Ltd; Post Deri,
Via. Abu Road,
Dist. Sirohi (Rajasthan).

APPEARANCES :

Shri R. S. Naruka for the Management.
Shri H. K. Modi for the workmen.

AWARD

The Central Government in the Ministry of Labour vide its Order No L-29011/785-D. (M.B) dated 12th August, 1987 has referred the following industrial dispute to this Tribunal for adjudication :

1. Whether the action of the management of M/s. R S M D C Ltd., Jaipur in denying 33 PL and 15 CL to the workers of Deri Mines is justified ? If not, to what relief the workers of Deri Mines are entitled ?
2. Whether the action of the Management of M/s. R S M D C Ltd; Jaipur is justified and legal in denying the uniforms to the Junior Assistant and Magazine Keeper since 1980 when it provided earlier ? If not, to what relief the Junior Assistant and Magazine Keepers are entitled ?
3. Whether the action of the management of M/s. R S M D C Ltd; Jaipur in denying regular scale of Pump Driver with effect from 26-7-1983 as agreed in the bilateral settlement, to Shri Abdul Karim Khan is justified and legal ? If not, to what relief the workman is entitled ?
4. Whether the action of the management of M/s. R S M D C Ltd; Jaipur in denying regular scale of Mason with effect from 1-8-83 to Shri Bhera Kala, skilled workers is justified and legal ? If not, to what relief the workman is entitled ?
5. Whether the action of the management of M/s. R S M D C Ltd; Jaipur in denying promotion to Shri S. L. Choudhary Junior Assistant to the post of Senior Assistant with effect from 1-6-82 is justified ? If not, to what relief the workman is entitled ?
6. Whether the action of the management of M/s. R S M D C Ltd; Jaipur is justified in not converting the post of Magazine Keeper into Junior Assistant as agreed upon in the Record of Discussions dated 11-5-82, which has affected Shri Hemant Kumar Modi w.e.f. 11-5-1982 ? If not, to what relief the workman is entitled ?
7. Whether the action of the management of M/s. R S M D C Ltd; Jaipur is justified and legal in not providing terrycot uniforms to the Machine Operators, Electricians and Sweepers and also woolen uniforms to the Drivers of Deri Mines with effect from 1983 ? If not, to what relief the above categories of workers are entitled ?
8. Whether the action of the management of M/s. R S M D C Ltd; Jaipur is justified in not granting the dual-duty allowance/officiating grade to Shri S. L. Choudhary Jr. Assistant in the grade of Rs. 590-910 from 4-6-1983 to 25-6-1984 when he was also holding the charge of Accountant at Deri Mines ? If not to what relief the workman is entitled ?
9. Whether the action of the management of M/s. R S M D C Ltd; Jaipur is justified and legal in not granting the overtime allowance for 241 hour as claimed by the Mines Manager from the period 1 December 1983 to February, 1984 ? If not, to what relief Shri Choudhary is entitled ?
2. Although in the order of reference itself, it had been directed that the party raising the dispute shall file statement of claim complete with relevant documents, list of demands and witnesses within the Tribunal within 15 days of the receipt of the order of reference, but no statement of claim etc. were filed within the stipulated period. Registered notice was sent to the parties and Shri N. S. Chauhan appeared on behalf of the Union. However, in spite of number of opportunities having been granted he filed a partial statement of claim in respect of only three of the demands and thereafter the Union lost interest and stopped appearing. In spite of number of opportunities and fresh notices having been sent, none appeared on behalf of the Union. So much so that the matter was taken up at Mount Abu which is very close to the R S M D C Ltd; but even then in spite of due service none appeared on behalf of the workmen. Even Shri R. S. Naruka Project Manager of the Deri Mines contended that the President and the Secretary of the Union had information of the hearing of the matter at Mount Abu on 22-9-88. It is, therefore, apparent that the Union has no more interest in pursuing the various demands mentioned in the order of reference.
3. It appears that the Union has lost interest because most of the demands have since been met by the Management as is apparent from the statements made by Shri R. S. Naruka Project Manager and Shri H. K. Modi, one of the workman affected before this Tribunal on 22-9-88. Shri H. K. Modi who is workman affected in item No. 6 of the schedule to the reference, made statement that the conversion of the post of Magazine Keeper to Junior Assistant will be to his disadvantage as he will become the junior most junior Assistant whereas the grades of the two posts are same and that he can be benefited only if he is promoted as Sr. Assistant. Therefore, he did not press his present claim as embodied in the schedule of reference. Similarly, Shri R. S. Naruka made statement that they are giving privilege leave and casual leave to the workers of the Deri Mines in accordance with the Mines Act. They had given regular scales to the Pump Driver w.e.f. 1-4-86 as per the agreement dated 18-8-84 Ex. M1 and M2 and also to all the daily rated workers including Shri Abdul Rahim Khan (item No. 3). Regular scale had also been given to Shri Bhera Kala (item No. 4) w.e.f. 1st April, 1986 and the grant of Mason scale to him was under consideration. He further stated that promotion had not been granted to Shri S. L. Choudhary (item No. 5 & 8) as disciplinary enquiry is pending against him. He further stated that if the post of Magazine keeper is converted to junior Assistant Shri H. K. Modi will be in loss as he will become the junior most Junior Assistant. He also stated that terrycot uniforms are not provided to Machine Operators as their efficiency is adversely affected due to perspiration while working underground. However, terrycot uniforms are being provided to Electricians and Sweepers. They were also supplying woolen uniforms to the Drivers of the Deri Mines. He was not sure about the payment of Dual Duty allowance/officiating allowance and overtime to S. L. Choudhary but according to their Rules, Dual duty allowance can be allowed for a maximum period of six months and overtime can be allowed for a maximum of 50 hours in a quarter. It may be observed here that the matters regarding payment of dual duty allowance/officiating rate and overtime allowance about which Shri Naruka has not given a categorical statement, need not be subject matter of Industrial Dispute as these can be conveniently determined in applications under section 33-C(2) of the I.D. Act. If the affected workmen are so advised they can make applications under section 33-C(2) of the I.D. Act.

4. In view of what has been stated above, 'no dispute' award is given and this reference stands disposed of.

Further it is ordered that the requisite number of copies of this award may be forwarded to the Central Government for necessary action at their end.

G. S. KALRA, Presiding Officer

17th October, 1988.

[No. S-11017/9/85 D.I(A)(i)]
V. K. SHARMA, Desk Officer

नई दिल्ली, 3 नवम्बर, 1988

का.ग्रा. 3448. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक अफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-10-88 को प्राप्त हुआ था।

New Delhi, the 3rd November, 1988

S.O. 3448.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the Central Bank of India and their workmen, which was received by the Central Government on the 27th October, 1988.

ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 33 of 1988

In the matter of dispute

BETWEEN

Dy. General Secretary,
Central Bank Employees' Association,
38, Arya Nagar,
Lucknow;

.. Petitioner

AND

Regional Manager,
Central Bank of India,
Etawah (U.P.)

.. Opp. Party.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-12012/367/87-D. II(A) dated 18th March, 1988, has referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of Central Bank of India in denying officiating chances to Shri I. N. Gupta, clerk is justified? If not, to what relief is the workman entitled?"

2. In the instant the workman filed his rejoinder on 29th August, 1988 and 23rd September was fixed for filing affidavit-evidence at camp Lucknow.

3. On 23rd September, 1988, neither the workman nor his authorised representative put in appearance. Managements representative states that he had come from Etawah and the workman was present on 29th August, 1988 but despite that he has not come. It also appears that no affidavit/evidence has been filed from the workman's side.

4. As such it appears that the workman is least interested in fighting out the claim, hence, a no claim award is given in the case.

ARJAN DEV, Presiding Officer
[No. L-12012/367/87-D. II(A)]
N. K. VERMA, Desk Officer

नई दिल्ली, 3 नवम्बर, 1988

का.ग्रा. 3449. — केन्द्रीय सरकार का समाधान हो गया है कि लोकहित में ऐसा करना अपेक्षित है कि सीसा खनन उद्योग को, जिसे औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 14 के अंतर्गत निर्दिष्ट किया गया है, उक्त अधिनियम के प्रयोजनों के लिए लोक उपयोगी सेवा घोषित किया जाना चाहिए;

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (क) के उपखण्ड (vi) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए तत्काल प्रभाव से छः मास को कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[संख्या एस-11017/9/85-डी-1(ए)(2)]

New Delhi, the 3rd November, 1988

S.O. 3449.—Whereas the Central Government is satisfied that the public interest requires that the Lead Mining Industry, which is covered by item 14 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947), should be declared to be a public utility service for the purposes of the said Act;

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares with immediate effect the said industry to be a public utility service for the purposes of the said Act for a period of six months.

[No. S-11017/9/85-D.I(A)(ii)]

का. ग्रा. 3450:—केन्द्रीय सरकार का समाधान हो गया है कि लोकहित में ऐसा अपेक्षित है कि जिंक खनन उद्योग में सेवकों का, जिसे औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 15 के अंतर्गत निर्दिष्ट किया गया है, उक्त अधिनियम के प्रयोजनों के लिए लोक उपयोगी सेवा घोषित किया जाना चाहिए;

अतः अब औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 2 के खण्ड (क) के उपखण्ड (ii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए तत्काल प्रभाव से छः मास को कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[संख्या ए-11017/9/85-डी-1(ए)(i)]

नन्द लाल, अवसर सचिव

S.O. 3450.—Whereas the Central Government is satisfied that the public interest requires that the Zinc Mining Industry, which is covered by item 15 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947), should be declared to be a public utility service for the purposes of the said Act,

Now, therefore, in exercise of the powers conferred by sub-clause (ii) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares with immediate effect the said industry to be a public

utility service for the purposes of the said Act for a period of six months.

[No. S-1107/9/85-D.I(A)(i)]

NAND LAL, Under Secy.

नई दिल्ली, 3 नवम्बर, 1988

का. मा. 3451.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जिला प्रबंधक, भारतीय खाद्य निगम, टीटलागढ़ के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निश्चित औद्योगिक विवाद में औद्योगिक अधिकरण, भुवनेश्वर के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार का 19-10-88 को प्राप्त हुआ था।

New Delhi, the 3rd November, 1988

S.O. 3451.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Distt. Manager, Food Corporation of India, Titlagarh and their workmen, which was received by the Central Government on the 19th October, 1988.

ANNEXURE

INDUSTRIAL TRIBUNAL, ORRISA, BHUBANESWAR

PRESENT:

Shri S. K. Misra, LL.B., Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar.

Industrial Dispute Case No. 63/1987 (Central)
Dated Bhubaneswar, the 29th September, 1988

BETWEEN

The Management of Distt. Manager, Food Corporation of India, Titlagarh.First Party—Management.

AND

Their workmen Sri Dhubal Bhoi 2. Shankar Dandsena (substituted by widow Smt. Afakari Dandsena), Sri Rama Prasad Dhal, C/o S. C. Malla, Regional Secretary, F.C.I. Employees' Union, Samabaya Bhawan, Janapath, Bhubaneswar.

.....Second Party—Workmen.

APPEARANCES:

Sri R. Balakrishna, Deputy Manager (P)—For the First Party—Management.

Sri S. C. Malla, Regional Secretary—For the Second Party—Workmen.

AWARD

1. The Government of India in the Ministry of Labour in exercise of powers conferred upon them by Section 10(1)(d) and Section 10(2-A) of the Industrial Disputes Act, 1947 by their Order No. L-42012/102/86-D.II(B) dated 6th October, 1988 have referred the following dispute between the employers in relation to the Management of District Manager, Food Corporation of India, Titlagarh and their workmen Sri Bhubal Bhoi, Sankar Dandsena (substituted by widow Smt. Afakari Dandsena) and Sri Rama Prasad Dhal for adjudication :—

terminating S/Shri Dhubal Bhoi, Shankar Dandsena and Rama Prasad Dhal from service with effect from 1-6-1986 is legal and justified? If not, to what relief the workmen are entitled?

2. The Food Corporation of India had a Food Storage Depot at Patnagarh in the District of Bolangir under the control of the District Manager, Titlagarh. The workmen Sri Bhubal Bhoi and late Shankar Dandsena had been engaged in the said Food Storage Depot as casual labourers on daily rate wage basis with effect from 1-1-1974. The workman Sri Rama Prasad Dhal was engaged as casual labourer on daily rate wage basis in the said depot with effect from 24-12-1981. All these workmen were disengaged with effect from 31-5-1986 thereafter they made representation to the District Manager, Food Corporation of India, Titlagarh and the Regional Manager, Bhubaneswar to allow them to continue in service and to give them regular employment. Since their request was not acceded to by the Management, they raised the dispute which was unsuccessfully conciliated. The conciliation having failed, the present reference was made for adjudication of the dispute as aforesaid.

3. It is the case of the workmen as would be seen from the statement of claim filed on their behalf by the Regional Secretary of the F.C.I. Employees Union that the workmen Sri Bhubal Bhoi and later Shankar Dandsena who worked as casual labourers since before 1976, were called for an interview alongwith other such labourers for appointment as regular workmen. They were, however, not given any regular appointment and they continuously worked as casual labourers in the Food Storage Depot at Patnagarh till they were retrenched on 31-5-1986. The workman Sri Rama Prasad Dhal also continued as casual labourer in the said depot till 31-5-1986 when he was retrenched. It is alleged that such retrenchment of the three workmen allegedly brought about on the strength of a circular issued by the F.C.I. Management on 2-5-1986 preventing engagement of casual labourers for a period exceeding seven days is illegal. It is further alleged in the written statement filed on behalf of the workmen that the F.C.I. Management appointed fresh batch of people in their organisation in 1979 and also in 1984 without taking into consideration their case for regularisation.

4. The Management of the Food Corporation of India, Titlagarh in its written statement has admitted that the workmen Dhubal Bhoi and later Shankar Dandsena were engaged as casual labourers in its Food Storage Depot at Patnagarh from 1-1-1974 and the workman Sri Rama Prasad Dhal was engaged from 24-12-1981. It was their case that their engagement was on "no work, no pay" basis and not against any regular posts. Their further case is that the engagement of the aforesaid three workmen was discontinued as per the instructions of the Headquarters, New Delhi. With regard to the allegation of the workmen that their claim for regularisation was not acceded to by the Management of the F.C.I., it was stated by the Management that in accordance with the Headquarters' instructions, the workmen Dhubal Bhoi and late Shankar Dandsena who had worked prior to 1976 were called to appear in an interview held by the Regional Manager, Bhubaneswar for selection for appointment on regular basis. The certificates produced by those candidates were verified by the District Manager, Titlagarh and it was found that the certificate of late Shankar Dandsena was false. Verification report in respect of Sri Dhubal Bhoi was not received. Under these circumstance, they could not be appointed as regular employees. The Management's further plea is that as per the instructions issued by the F.C.I. Management at the Headquarters, the casual workers who did not fulfil the conditions of appointment, were to be retrenched on payment of compensation and accordingly, the three above named workmen were disengaged from 31-5-1986. In this very same written statement, the Management has also stated that the above named three workmen who had been engaged on "no work, no pay" basis, were disengaged because the depot was closed/dehired on 30-9-1986 and their services were no longer required.

"Whether the action of the management of the District Manager, Food Corporation of India, Titlagarh in

5. On the pleadings of both parties, the following issues were framed:—

ISSUES

- (1) Whether the action of the District Manager, Food Corporation of India, Titlagarh in terminating S/Shri Dhubal Bhoi, Shankar Dandana and Rama Prasad Dhal from service with effect from 1-6-1986 is legal and/or justified?
- (2) To what relief, if any, the workmen are entitled?

FINDINGS

6. Issue No. 1.—In this proceeding, no oral evidence has been adduced by the parties. Three documents were marked as Exts. 1, 2 and 3 on behalf of the workmen on admission.

Ext. 2 is the office order dated 31-5-1986 by the Asstt. Depot Superintendent, Food Corporation of India, Food Storage Depot, Patnagarh by which the three workmen Dhubal Bhoi, Shankar Dandana and Rama Prasad Dhal were retrenched as their services were no longer required by the Corporation. The Order reads:—

"In pursuance of Headquarters Food Corporation of India, New Delhi Circular No. 28 of 1986 and N.C. EP (illegible) dated May 2, 1986 and District Office, Food Corporation of India, Titlagarh Circular No. A-25 (circular)/85/1319 dated 24-5-1986 the following casual workers are retrenched as their services are no longer required by the Corporation."

The Circular No. 28 of 1986 referred to in the aforesaid order has been marked as Ext. 1. This circular refers to an earlier circular issued by the Food Corporation of India, Head Quarters, New Delhi instructing that no casual labour/worker should be appointed in the office of the Corporation for more than seven days. It was mentioned in the said circular that the Headquarters Office has observed that various offices were engaging casual employees not only against casual work but also against regular job and were allowing such casual employees to continue in their services indefinitely. By the Circular dated 2-5-1986 it was instructed that henceforth no person should be appointed on casual/daily rated/part-time basis in the offices/depots of the Corporation by any authority and any infringement of such order would attract disciplinary action against the defaulters. Ext. 3 is another confidential letter issued by the headquarters office of the F.C.I., New Delhi to the Regional Manager, Food Corporation of India, Bhubaneswar. In this letter Ext. 3, in paragraph 2, reference was made to the Circular No. 28 of 1986 (Ext. 1) and it was observed that despite the instructions in the said Circular, the headquarters Office noticed that some of the offices have engaged casual employees even after 2-5-1986 disregarding the instructions issued by the headquarters in Circular No. 28 of 1986. In paragraph 3, it was intimated that the proposal to relax the ban on recruitment against Class III and Class IV posts from out of the casual/daily rated employees who had completed three months period on 2-5-1986 i.e. the date of imposing ban on engagement of casual/daily rated/part-time employees and who fulfilled the other requirements of posts was approved. In paragraph 4 there was also mention of such relaxation in respect of full-time casual/daily rated employees who had been performing duties of the regular employees of the Corporation and who had been working for three months prior to 2-5-1986 and fulfilled the requisite qualifications and it was stated that casual employees who did not fulfil the aforesaid conditions should be retrenched after payment of retrenchment compensation as required under the provisions of the Industrial Disputes Act, 1947.

7. As would be seen from the office order dated 31-5-1986 Ext. 2, the aforesaid three workmen were retrenched as their services were no longer required by the Corporation with effect from the date of issue of the said order. It has been stated in paragraph 4 of the written statement filed on behalf of the First Party-Management on 2-2-1988 that such retrenchment was brought about in accordance with the instructions of the F.C.I. Headquarters at New Delhi. But as I find the instructions were not fully complied, in as much as, there was no payment of any retrenchment compensation to the workmen under the provisions of the Industrial Disputes Act, 1947. In paragraph 7 of the said written statement, the

First Party-Management also stated that on closure of the depot at Patnagarh, the services of the aforesaid workmen were no longer required and they were retrenched. This is another misleading statement, in as much as, the office order Ext. 2 goes to show that the second party-workmen were retrenched on 31-5-1986 but in paragraph 1 of the written statement of the Management it is stated that the depot at Patnagarh was closed down with effect from 30-9-1986.

8. Law as it stands, there can be no manner of doubt that termination of services of the three workmen with effect from 31-5-1986 by their Order Ext. 2 was 'retrenchment' within the meaning of Section 2(oo) of the Industrial Disputes Act.

So far as the concept of retrenchment is concerned, their Lordships of the Supreme Court in the case of Avon Services (Production Agencies) Pvt. Limited Vrs. Industrial Tribunal, Haryana, Faridabad and others, reported in 1979 (1) L.L.J. 1 have quoted with the approval the decision of the Supreme Court of India in the case of the State Bank of India Vrs. N. Sundara Money, (1976) 3 S.C.R. 163:—

"A break-down of S. 2(oo) unmistakably expands the semantics of retrenchment. 'Termination..... for any reason whatsoever' are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is, has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of S. 25F and S. 2(oo). Without speculating on possibilities, we may agree that 'retrenchment' is not longer terra incognita but area covered by an expansive definition. It means 'to end, conclude, cease'."

9. In the facts of the present case, as stated in the pleadings of both parties considered alongwith the termination Order Ext. 2, it has got to be held that terminations of the above named three second party-workmen amounted to retrenchment and the said retrenchment having been brought about without compliance of the provisions laid down in Section 25F of the Industrial Disputes Act, is illegal.

10. Issue No. 2.—Now coming to the question of relief, the second party-workmen are certainly entitled to reinstatement with full back wages. In respect of the second party-workman late Shankar Dandana, there can not be any direction for reinstatement since he expired on 31-3-1987. In the circumstance, his widow who has been substituted in this proceeding, would be entitled to back wages which the workman Shankar Dandana would have received from the date of his retrenchment i.e. 31-5-1986 till the date of his death i.e. 31-3-1987.

11. The reference is accordingly answered in the following manner:—

Termination of services of S/Shri Dhubal Bhoi, Shankar Dandana and Rama Prasad Dhal by the Management of the Food Corporation of India, Titlagarh with effect from 1-6-1986 is illegal and unjustified. The workman Sri Dhubal Bhoi and Sri Rama Prasad Dhal are entitled to reinstatement with full back wages. So far as the workman late Shankar Dandana is concerned, he having died on 31-3-1987, his widow Afakari Dandana would be entitled to the full back wages which the workman late Shankar Dandana would have received from the F.C.I. Management from the date of his retrenchment i.e. 31-5-1986 till the date of his death i.e. 31-3-1987.

S. K. MISRA, Presiding Officer

[No. L-42012/102/86-D.II(B)]

का. घा. 3452:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व मैसर्स एस सी कम्पनी लिम., मन्दामारी डिविजन के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्म-कारों के बीच अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-10-88 को प्राप्त हुआ था।

S.O. 3452.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of S. C. Company Ltd. Mandamarri Division and their workmen, which was received by the Central Government on the 19th October, 1988.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD
PRESENT :

Sri D. J. Jagannadha Raju, B.A., B.L., Presiding Officer.

Dated : 4th October, 1988

Industrial Dispute No. 104 of 1984

BETWEEN

The Workmen of Singarani Collieries Company Limited,
Mandamarri Division, P.O. Kalyankhani, Adilabad
Dist.,

AND

The Management of Singarani Collieries Company Limited
Mandamarri Division, P.O. Kalyankhani, Adila-
bad District.

APPEARANCES :

Sri V. Venkat Ramana and V. Srinivas Advocates—for
the Workman.

Sri K. Srinivasa Murthy, Sri H. K. Saigal and Miss G.
Sudha, Advocates—for the Management.

AWARD

The Government of India, Ministry of Labour by its Order No. L-22012/35/84-D.III(B) dated 4-12-1984 referred the following dispute under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 between the employers in relation to the Management of Singarani Collieries Company Limited, Mandamarri Division and their workman to this Tribunal for adjudication:—

Whether the demand of the Tandur Coal Mines Labour Union for confirmation of the under mentioned 16 workers of Kalyankhani I Incline of Singarani Collieries Company Limited as General Mazdoors in Cat. I with retrospective effect is justified? If so, to what relief are they entitled and from what date?

1. Narahari Sudershan Reddy.
2. Vemunuri Vankataiah
3. Silvary Rayamallu
4. Thokala Chinnalaih
5. Jogula Kisthalh
6. Karamalla Bikshapathy
7. Kallapalli Mondaiah
8. Ballam Shankar
9. Muksha Ellaiah
10. Kolipaka Chandraiah
11. Namani Rajaiah
12. Thoala Mallaiah

13. Dodde Mallaiah
14. Kayada Ramulu
15. Palugani Baghavu
16. Mudimedugula Babu".

This reference was registered as Industrial Dispute No. 104 of 1984 and notices were issued to the parties.

2. This industrial dispute relates to the demand of the Tandur Coal Mines Labour Union for confirmation of 16 workers of Kalyani Khani I Incline as General Mazdoors in Category I with retrospective effect. The claim statement in brief runs thus. Sri Narahari Sudershan Reddy and 15 others were appointed as General Mazdoors in the Workshop in the year 1981. They were working as Category I General Mazdoors continuously. They were transferred to Kalyankhani C.S.P. and from there they were transferred on 14-1-1983 to K.K. I. Incline. They are working in the existing clear vacancies as Category I Surface General Mazdoor on Category I wages. Several persons who were juniors to these 16 workers were confirmed but these 16 workers were not confirmed as they raised a dispute. The Management acted discriminating against these workers. The action of the Management resulted in depriving them of normal annual increments, the two additional increments as per J.B.C.C.I. III and many other consequential benefits. The Petitioner through letter dated 11-11-1983 requested the Management to confirm these 16 workers as Surface General Mazdoor w.e.f. 1982 in accordance with the Company Standing Orders. The Management did not take any action. Then under letter dt. 10-1-1984 the industrial dispute was raised by the union. When the comments of the Respondent were called, The Respondent did not give any reply and the Assistant Labour Commissioner conducted final conciliation on 25-5-1984, the conciliation proceedings ended in failure due to the adamant policy of the Management. The Respondent then victimised these 16 workers by not only denying their confirmation but with a grudge they were transferred to K.K. I Incline from General Mazdoor category to Coal Fillers and this is in violation of Section 9A of the I.D. Act and the Standing Orders. The Management is victimising and harassing these 16 workers. The Respondent Management has the liability to confirm these 16 workers as permanent surface general mazdoors with Category I wages with retrospective effect as they have put in continuous service and as they were working in existing vacancies in cat. I surface general mazdoor. The Management is also liable to sanction annual increments for the years 1982, 1983 and 1984 along with two additional increments under I.B.C.C.I.III. The eligibility of right of confirmation is proved as per the minutes of conciliation proceedings held on 25-5-1984. The Tribunal may be pleased to direct the Respondent to confirm Narahari Sudershan Reddy and other 15 workers as permanent surface general mazdoors on category I wages with retrospective effect and grant them consequential and attendant benefits.

3. The counter filed by the Management runs thus : This Respondent denies all the petition allegation. The Petitioner is put to strict proof of all the allegations. Under Company's Standing Orders 'Badli' is defined as 'badli' or 'substitute' is one who is appointed in the post of a permanent employee or probationer who is temporary absent. A badli worker is a substitute and he works in the place of permanent workman or temporary workman in any category or in any category of piece rated workers and he is paid the respective wages of that particular day. Absorption of badli workers as per permanent workers depends upon the availability of vacancies. But badli workers are also provided all facilities like Leave Travel Concession, Long Leave Travel concession, Leave, Sick Leave, Casual Leave House rent allowance etc. These facilities are given to them even if they are not absorbed as permanent workman if they put in one year service i.e. 190/240 musters in a calendar year. It is not correct to allege that Narahari Sudershan Reddy and other 15 workers involved in this dispute were appointed as General Mazdoors in 1981. All these 16 people were empanelled as badli workers and as and when there was vacancy due to absence or leave they did duties as badli workers. These petitioners were empanelled as badli workers w.e.f. dates shown against their names in the tabular statement in page 2 of this counter S. Nos. 1 to 9 were first empanelled at workshop and later at Coal Screening Plant w.e.f. 1-6-1983. Later they were empanelled at K.K. No. 1

Incline from 13-7-1983. S. Nos. 10 to 16 were empanelled as badli workers at C.S.P. and later at K.K. No. 1 Incline from 13-7-1983. The empanellement and disempanelment is done based on the availability of work. It was decided to employ the senior persons who have put in long service in Mine on surface in workshop and C.S.P. Nowhere in the Standing Order is there a provision for absorption of badlies as claimed in this claim statement. It is false to claim that these 16 workers were appointed as general mazdoor Category I and they were being discriminated against. The Management did not violate any law including the Standing Order. Annual or additional increments are granted to permanent workmen, petitioners being badli workmen are not entitled to increments as per the N.C.W.A. III. In the claim statement, Standing Orders have been misinterpreted and misconceived. It should also be remembered that a badli worker cannot claim absorption as a permanent workman as a matter of right. Absorption on permanent basis depends upon availability of vacancies and suitability of the person. There are no vacancies in K.K. No. 1 Incline nor is there workload to create posts. Badlies are posted in vacancies to cover absenteeism and to meet emergency to see that mine will be running smoothly. The company does not have the financial capacity as it is running in losses and cannot incur additional financial expenditure by absorbing these people as permanent workmen. Merely holding conciliation proceedings does not confer any right on petitioners nor does it prove that all the facts alleged in the claim statement are true. The petitioners are only badli workers and for the work they do they are paid appropriate wages. Their absorption depends upon various other factors and there is no question of their being straightaway absorbed as permanent employees and confirmed. The Tribunal may be pleased to dismiss the petition.

4. The point for consideration in this industrial dispute is whether the 16 workers mentioned in the schedule to the reference are entitled for confirmation as General Mazdoor category I with retrospective effect?

5. In this industrial dispute Sri V. Vankatramana, Advocate for the Workmen, contends that the 16 workers involved in this dispute were appointed as General Mazdoors and though seven years have elapsed they are not yet confirmed or made permanent. Even if they are assumed to be badli workers, they cannot remain without being absorbed as General Mazdoors for seven long years. Justice requires that they should be appointed as General Mazdoors on a permanent basis and given all the consequential benefits. He further contends that they were originally appointed as General Mazdoors and then they were being transferred from one unit to another unit deliberately and after they raised the dispute they were converted into badli workers. Several of their juniors have been confirmed and this particular allegation in the claim statement is not controverted by the Management. The Management has not produced its records to show that these people were paid wages as badli workers hence the claim of the petitioners that they are General Mazdoors should be accepted and they should be made permanent immediately. He places strong reliance upon, the fact that in this industrial dispute, no evidence is produced by the Management in support of its contention and the pleas taken. He contends that these workers should be confirmed as general mazdoors Category I and given all the consequential benefits. He places reliance upon AIR 1988, S.C. Page 390 (Ram Kumar v. Union of India) and AIR, 1980 S.C. Page 517 (U.P.I.F. Deptt. C.P.S.W. Association, v. Union of India).

6. On behalf of the Management, it is contended by Kumari G. Sudha, Advocate that the evidence produced by the workers themselves indicates that these 16 workers are only badli workers. By mis-interpreting the Rules and Standing Order, they are trying to claim confirmation as Category I Mazdoors over looking the fact that they should be first absorbed as General Mazdoor or Coal Fillers and then only they can expect to be confirmed. It should also be remembered that absorption of badli workers and confirmation of temporary workers as permanent workers depends upon the existence of vacancies. Badli workers are only empanelled and they are not appointed. There is no proof of the fact that these 16 badli workers worked continuously. In the absence of any evidence to show that they worked continuously, they are not entitled to claim that they should be confirmed and made permanent as Category I mazdoors. Kumari G. Sudha contends that in

this particular case, the workers are claiming a second higher post simply because they worked as badli workers in those higher posts. Being badli workers they can only ask for absorption as temporary employees and then aspire for promotion as time rated workers. She contends that the industrial dispute is raised in a frivolous manner by giving wrong interpretation and twist to the rules and facts.

7. On behalf of the workmen, three witnesses have been examined. Four documents have been marked as W1 to W4. On behalf of the Management no oral or documentary evidence has been adduced. I shall now examine the material available on record to find out whether the claim of the petitioner is justified?

8. Though in the claim statement it is asserted that these 16 workers were originally appointed as General Mazdoors in the Workshop in 1981 and that they have been working continuously as Category I General Mazdoors from 1981; Not a single document is produced to show that they were appointed as General Mazdoors and that they were working in Category I as General Mazdoors. Infact Ex. W1 the representation given by the Union to the Management on 11-11-1983 clearly describes these 16 workers as badli, workers of K.K. No. 1 Incline, on the ground that they have worked continuously for more than two years; a request was made to confirm them as General Mazdoor w.e.f. 1982. In Ex. W2 the representation given to the Assistant Labour Commissioner on 10th January, 1984 the Union again indicated that these 16 workers are badli workers appointed in 1981 and claimed that they worked continuously as General Mazdoor, first in the workshop, then in C.S.P. at K.K.I Incline and again in K.K.I Incline. The request is also made to the effect that as per Standing Orders they should have been confirmed after three months continuous service. They claim that the action of the Management in not confirming these workers is a case of rank in justice and unfair labour practice. In Ex. W3 Minutes of discussions in the conciliation meeting held on 25-5-1984, it is mentioned that the Management is unable to concede the demand since it was not agreed to by the higher management. In Ex. W4 the report of failure of conciliation it is clearly mentioned that these 16 workers are badli workers appointed in 1981 and that they worked in workshop K.K.I C.S.P. and later in K.K. No. 1 Incline. It is also claimed that they worked as General Mazdoor that they were doing the work of General Mazdoors. The report also indicates that the Management declined to accept the demand of the Union stating that it is a policy matter which has to be decided by the higher management and that the higher management did not agree for this demand. From the documents produced by the workers themselves, it is quite clear that these 16 workers were not appointed as General Mazdoors they were only empanelled as badli workers.

9. When we come to the oral evidence, we find that the workers admit that they were taken initially as badli workers but they tried to assert that they were appointed as permanent mazdoors and that they were working in permanent vacancies Category I General Mazdoor. In the very first sentence of W.W.1's evidence he clearly stated that he is working as badli worker in K.K. No. 1 Incline. Subsequently he asserts that he was appointed as permanent mazdoor. In the oral evidence he admits that they were working as badli workers in different units during different periods. He also admits that whenever they approached the authorities for confirming them they were told that there is no workload and that there is no scope for confirming them. On the ground that they are discharging duties of general mazdoor and he claims that he should be appointed as Category I general mazdoor with retrospective effect. In the cross examination, searching questions were put to W.W.1 and he admits that they are not producing any documents to show that they were appointed as general mazdoors. He claims that people who joined much later than him in C.S.P. were confirmed. In the end portion of the evidence, he makes the following statements "It is not correct to say that though we are only badli workers we presume ourselves to be general mazdoor Category I and making demand for confirmation of permanency". When questioned about the documents, he claims that no documents were given to him and whatever documents are given are in the office. It was suggested to the worker that because the documents revealed that they are badli workers they are suppressing them. W.W2 Ballam Shankar admits that though they were

styled as badli workers, they were entrusted with duties of Category I General Mazdoor. He admits that he was originally taken as badli worker. In the end portion of the chief examination, he claims that he and other workers should be declared as General Mazdoor Category I with retrospective effect. He admits that he had not filed any documents to show that he was appointed as Category I General Mazdoor. He claims that he is ignorant of the fact that in the Company's documents he is indicated as badli worker and only for that purpose he is suppressing the official records.

10. The most important evidence is given by W.W.3 the President of the Union. He asserts that these 16 workmen were appointed as General Mazdoors in 1981. He claims that the Management changed their designations as badli workers later. In the cross examination he admits that a badli worker is a substitute in place of a regular worker and that he works whenever a regular worker is absent for a short period. He admits that badli workers are entrusted different types of work for which the permanent or temporary workers are absent. When questioned as to whether there is any proof of these workers having put in requisite number of musters in a calendar year and on that basis they are claiming to be absorbed on regular basis. The witness assets in the reply saying that as the dispute is raised on the basis that they are General Mazdoors Category I and that as dispute is for confirmation they did not mention these facts. He admits that he did not file any documents to show that these people were originally appointed as General Mazdoors Category I. He gives a very devious explanation as to why he did not produce official documents and why he did not summon the pay-sheets if he is confident of the fact that the pay sheets referred to them as Category I General Mazdoor. It was suggested to the witness that because the pay sheet referred to them as badli workers he is suppressing the same and that he is not taking steps to produce them or summon them. In the end portion of the cross examination he admits that he is not able to file any documents to substantiate the various statements made by him in evidence. He also admits that he did not raise any dispute when 16 workers were posted from C.S.P. to K.K. No. 1 Incline. In spite of all the admissions made by him, he still asserts that these 16 workers are permanent workers and that they should be confirmed as Category I General Mazdoors.

11. Reading the entire evidence it is quite clear that these 16 workers are originally empanelled as badli workers only and they were not appointed as General Mazdoors. I shall deal with this matter on the basis that they were originally badli workers ignoring the claim of the workers that they were originally appointed as general mazdoor. Even if they are originally taken as badli workers, they cannot be made to continue as badli workers for ever. By the time of the reference itself they have been working continuously for three years. Now they have completed nearly seven years. Justice requires that they should be absorbed in the vacancies that arise or in the vacancies that are existing. There is no dispute about the fact that from 1981 onwards these workers were continuously working and they are deriving the badli workers wages with the consequential benefits as they have worked for long periods. But they cannot continue as badli workers for life. AIR 1988 S.C. Page 390 the Supreme Court dealt with the case of casual labour who were working continuously for periods varying from 10 years to 16 years. In that case also the Management did not deny the fact of continuous service by the workmen, the rules of the Railway Establishment Manual have been considered and these provisions are similar to Standing Orders of the Singareni Collieries Company Limited. Considering all these facts the Supreme Court issued a direction to the Management directing the Management to consider the claim of each of the petitioners promptly and make appropriate orders for their regularisation. In the present case also such a direction has necessarily to be issued because these workers have been continuously working in the last seven years. In AIR 1988 Supreme Court, page 517 the Supreme Court dealt with the case of workmen employed as contingent paid staff in Income Tax Department and comparing their case with an earlier decision of the Supreme Court in 1987 Supreme Court, page 2342 (Daily Rated Casual Labour Employed Under P&T Department v. Union of India) and gave a direction to prepare a scheme on a rational basis for absorbing them as Clause IV employees of these persons who were working for more than one year. The Court also directed that till they are absorbed they should be paid wages at rates equivalent to the minimum

of the pay in the pay scale of the regularly employed workers in corresponding cadres. The principle of these decisions of the Supreme Court apply with full vigour to the facts of our case. As the workers are already receiving the wages as badli workers on par with Category I General Mazdoor, no separate direction need be given regarding the wages and allowances to be paid. As regards their regular absorption, a direction should be issued directing the Management to absorb these 16 badli workers as regular employees in the existing vacancies or in the vacancies that are to arise. They should be given preference over others and they should be absorbed with retrospective effect as and when vacancies arose or as and when there were permanent vacancies for absorption.

12. In the result, I answer the reference as follows :—"The demand of the T.C.M.L. Union for confirmation of 16 workers in K.K. No. 1 Incline as General Mazdoor in Category I is not justified. Subject to existence of vacancies and vacancies arising their absorption should be done on the basis of length of continuous officiation. From the time they are absorbed, they should be confirmed within three months in accordance with Standing Orders of the Company."

Award is passed accordingly.

Sd/-

INDUSTRIAL TRIBUNAL

Appendix of Evidence

Witnesses Examined
for the Workmen :

Witnesses Examined
for the Management:

W.W.1 N. Sudershan Reddy
W.W.2 Ballam Shanker
W.W.3 S. Nagaiah Reddy.

NIL

Documents marked for the Workmen:

Ex. W1 True Copy of the letter dt. 11-11-83 addressed by M.K.S. V. Raghava Rao, Secretary, T.C.M.L. Mandamarri to the Additional C.M.E. S.C.Co. Ltd., Mandamarri Division with regard to confirmation of General Mazdoor.

Ex. W2 True copy of the letter dt. 10-1-84 addressed by S. Nagaiah Reddy, President to the Assistant Labour Commissioner (C), Mancherial with regard to confirmation of General Mazdoor of K.K.1. Incline.

Ex. W3 True copy of the discussions held on 25-5-1984 in connection with the T.C.M.L. Union, representation regarding confirmation of N. Sudershan Reddy and 15 badli workers as General Mazdoors before A.L.C. (C) Mancherial.

Ex. W4 True copy of the failure of conciliation report dt. 25-5-84.

Documents marked for the Management

NIL

D. J. JAGANNADHA RAJU, Industrial Tribunal

[No. I-22012/35/84-D III(B)]

का. आ. 3453:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस. सी. कम्पनी लि. के प्रबंध-तंत्र के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधि-करण, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-10-88 को प्राप्त हुआ था।

S.O. 3453.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. S. C. Company Limited Mandamarri Division and their workmen, which was received by the Central Government on the 19th October, 1988.

ANNEXURE
BEFORE THE INDUSTRIAL TRIBUNAL AT
HYDERABAD

PRESENT :

Sri. D. J. Jagannadha Raju, B.A., B.L., Presiding Officer.

Dated 4th October, 1988

Industrial Dispute No. 102 of 1984

BETWEEN :

The Workmen of Singareni Collieries Company Limited,
Mandamarri Division, Adilabad District (A.P.).

AND

The Management of Singareni Collieries Company Limited.,
Mandamarri Division, Adilabad District.
(A.P.).

APPEARANCES :

Sarvasri V. Venkata Ramana and V. Srinivas, Advocates—for the Workmen.

Sri K. Srinivasa Murthy and Mis G. Sudha, Advocates—for the Management.

AWARD

The Government of India, Ministry of Labour by its Order No. L-22011/27/84-D.II.B dated 28-11-1984 referred the following dispute under Sections 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 between the employers in relation to the management of Singareni Collieries Company Limited, Mandamarri Division and their workmen to this Tribunal for adjudication :—

“Whether the demand of the Tandur Coal Mines Labour Union for confirmation of the undermentioned 16 workers against the posts held by them in an officiating capacity with retrospective effect is justified? If so, to what relief are they entitled and from what date?”

S. No.	Name	Post
1. Sarvasri Chikkudu Somalah		Trammer
2. G. Ramaswami		"
3. Jangapalli Narasiah		"
4. N. Bheema Rao		"
5. Gumpala Malliah		"
6. Ch. Thirupathi Reddy		"
7. Sudula Ramulu		"
8. Pothukuri Posham		"
9. Gaandragiri Mysaiah		Lineman
10. Gandla Rajaiah		"
11. Thokala Balaiah		Hauler Khalasi
12. Boge Meenaiah		"
13. Kolipaka Pedamalliah		Coalcutter
14. V. Chandraiah		"
15. D. Lingaiah		"
16. V.P. Railingu		"

This reference was registered as Industrial Dispute No. 102 of 1984 and notices were issued to the parties.

2. In this industrial dispute the Tandur Coal Mines Labour Union demands confirmation of 16 workers against the posts held by them in an officiating capacity with retrospective effect. Serial Nos. 1 to 8 in the claim statement seek confirmation in the post of Trammers, Serial Nos. 9 and 10 claim confirmation as Lineman, Serial Nos. 11 and 12 claim confirmation as Hauler Khalasi and Serial Nos. 13 to 16 claim confirmation as Coal Cutters. The claim statement in brief runs thus. Chikkudu Somaiah and 15 other workers are acting as Trammer, Lineman, Hauler Khalasi and Coal Cutters in clear vacancies from 1981 at K. K. No. 1 Incline. The Workmen and the Union requested the Management many times to confirm the above workers in their respective trades in which they were officiating. The Union raised an industrial dispute under letter dt. 23-7-1983. On 9-6-1984 conciliation talks were held and the conciliation

proceedings failed. Then the dispute has been referred for adjudication. In the Singareni Collieries Company Limited, if there is vacancy in a higher category it is filled up by taking piece rated coal fillers or general mazdoor and acting allowance is paid to him. Under the Standing Orders if any worker continuously works in a clear vacancy or if he acts for three months in the higher post, he is entitled to be confirmed automatically. As these 16 workmen were working from 1981 continuously in an acting capacity they are entitled to be confirmed in their respective categories. The Management violated the above rule and refused to confirm them in different categories. By reason of the Management's action, the workers are harassed and grave injustice is caused to them, they are losing the annual increments and they have lost increments recommended by J.B.C.C. I-II, they are also losing the other consequential benefits like sick leave, casual leave, paid holiday for the higher category. They are also losing L.T.C., LL.T.C. and eligibility for first class train fare. The attitude of the Management is unjustified. The claim of the management that there are surplus workers in K.K. No. 1 Incline is not true. If there are surplus workers, one fails to understand how people from lower categories are taken to work in higher categories on payment of acting allowance. There is no proof of any Mine authority declaring the list of surplus workers nor is there any circular issued by the General Manager indicating the surplus workers in any Mine. The stand taken by the Management is not at all correct. In these circumstances it is humbly prayed that the Tribunal may be pleased to direct the Respondent to confirm these 16 workers in the respective higher posts in which they have been acting w.e.f. 1981.

3. The counter filed by the Management briefly runs thus.—The various claim petition allegations are denied. The petitioner is put to strict proof of the same. Without prejudice to the rights of the Management it is submitted that the manpower study was conducted by the Industrial Engineering Department of Singareni Collieries Company Limited. As regards the K.K. No. 1 Incline, the position is as follows :—

Sl. No.	Designation Category	Man power required	Existing
1. Trammers		114	117
2. Lineman		31	31
3. Hauler Khalasi		45	45
4. Coal Cutters		84	88

It is clear from the above statement that there is a surplus of man power in atleast two categories namely Trammers and Coal Cutters. Whenever permanent workmen are absent either unauthorisedly or on leave or sick leave, general mazdoors or coal fillers would be acting in the leave and temporary vacancies and they would be paid acting allowance. Coal Fillers are piece rated workmen while these categories are all time rated workmen. It is not correct to say that these 16 workmen acted in clear vacancies from 1981, they only worked in leave vacancies and whenever there was need. Whenever a vacancy arises in a higher category general mazdoors and the coal fillers who already acted in the respective higher category and who were found suitable and who were seniors are considered and promoted. There are no vacancies in K. K. No. 1 incline. Hence nobody was considered for promotion. It is not correct to say that these disputed workmen were denied promotion. They have to be considered for promotion as and when vacancies arise in future.

4. The Standing Orders of the Company do not indicate that a person who acts in a higher category gets vested right for automatic promotion. The promotion depends on suitability seniority of acting in a higher post and the concerned trade test etc. Whenever casual or temporary vacancies arise due to absenteeism or leave people are made to work in the higher category and they are accordingly paid acting allowance. Unless there are 16 clear vacancies as alleged by the Union, these workmen cannot be continued in the higher categories. It is not correct to say that by non-confirmation these people were denied the increments recommended by the J.B.C.C.I-II and other consequential benefits. Under the N.C.W.A. III on the recommendation of the J.B.C.C. I-II higher wages and allowances were given not only to the higher categories employees but to

all workmen. The workmen who were on permanent rolls as on 31-12-1982 are eligible for two additional increments. The workers involved in this dispute were also given two additional increments in their respective categories. L.T.C. and LL.T.C. are extended to all employees. Similarly they are eligible for leave and eligibility for travel in the class appropriate for their basic pay. The Union suppressing various facts has come forward with this claim for confirmation by misrepresenting the facts. By giving them opportunity to act in the higher categories the workers are getting trained in semi-skilled and skilled jobs and they would later be considered for absorption in the higher categories depending upon the vacancies available. The workman in dispute are not eligible for promotion and there are no vacancies for promoting them. The Company has been incurring losses and if has no financial capacity to take up any additional financial burden by giving them promotion. The Tribunal may be pleased to dismiss the petition.

5. The point for consideration in this industrial dispute is whether 16 workers involved in this dispute are entitled to be confirmed in the higher posts in which they were acting and drawing acting allowance?

6. Sri V. Venkatramana, Advocate for the workmen contended that these workers have been acting in higher posts for a fairly long time. In view of the position stated in the counter there are no vacancies in K. K. No. 1 Incline. In a case of this nature when the workers contend that they are acting continuously in the higher category, it is the duty of the Management to produce musters and attendance register to disprove the claim. The Management has not done so. In view of the man power survey report indicating that there are no vacancies and that infact there is surplus age in certain categories. A direction can be given to the Management to absorb these people on a priority basis in the higher posts giving credit for their long continuous officiation.

7. On behalf of the Management Kumari G. Sudha, Advocate contends that mere acting in the higher post does not give the worker vested right to claim promotion automatically. People get eligibility to be considered for promotion on the basis of length of officiation in the higher post and their passing specified trade test and the availability of vacancies. She has no objection for a direction to be issued for giving priority to these workers for absorption in future vacancies subject to the qualification of trade test. In view of the stand taken by the workers as well as the Management, it would be unnecessary to discuss elaborately the oral evidence and the documentary evidence. Though Exts. W3 to W5 promotion orders given to three other workers are produced in evidence, there is no proof of the fact that the workers involved in this dispute are seniors to those three promoted persons. In view of the high unauthorised absenteeism in S. C. Co. Ltd., several people in the lower categories have opportunity to officiate in the higher category. For this purpose they are paid acting allowance. But by merely acting in higher posts they do not acquire a vested right to claim automatic promotion to the higher posts. Now the workers admit that the figures as revealed by the man power survey are correct. In this view of the matter, it is quite clear that there are no vacancies in the higher categories as claimed by the workers. The advocate for the workers has taken a reasonable stand and he frankly stated that in view of the facts revealed by the evidence, direction may be issued for promoting these workers giving them priority over others. The Advocate for the Management has no objection for such a direction being given but she claims that the promotion should be subject to the concerned workman passing the specified trade test and on the basis of the length of officiating in the higher post. Her stand also is reasonable. This industrial dispute can be disposed of by giving a direction.

8. In the result, I answer the reference as follows:— The demand of the Tander Coal Mines Labour Union for confirmation of the 16 workers against the posts held in an officiating capacity is not justified as there are no vacancies in the respective categories. However as those people gained considerable experience by officiating in the higher posts for a sufficiently long period in future vacancies that arise, these people may be promoted giving them priority subject to their passing the trade test prescribed for each higher post. Their claim shall be considered fixing seniority on the basis of length of officiating in the higher category.

Award is passed accordingly.

Appendix of Evidence

Witnesses Examined for the Workmen :

W.W1 S. Nagalah Reddy
W.W2 G. Ramaswamy
W.W3 Ch. Somaiah

Witnesses Examined

for the Management :
M.W1 T.V.S. Rao

Documents marked for the Workmen :

- Ex. W1 True Copy of the letter No. T.C. M.L. Union dated 23-7-83 of Secretary, T.C.M.L. Union, Mandamarri addressed to the Assistant Labour Commissioner (C) Mancherla with regard to confirmation of certain acting workers.
- Ex. W2 Copy of failure of conciliation report dt. 13-6-84.
- Ex. W3 Copy of the promotion order dt. 20/21-6-1985 issued by General Manager, Mandamarri to Ruma-heti Poche Rao, General Mazdoor K.K. I Incline.
- Ex. W4 True copy of the office order dt. 20/21-6-1985 issued to Dasi Rajiah, Coal Filler, K.K. I Incline, Mandamarri by the General Manager, Mandamarri.
- Ex. W5 Office order dt. 17/20-8-1964 issued to Narahari Rajiah, Coal Filler K.K. I Incline by Dy. C.M.E., K.K.I.

Documents marked for the Management :

- Ex. M1 Letter dt. 24-5-84 addressed by Dy. C.M.E., K.K.I to the Additional C.M.E., M.M. Singareni Collieries Company Limited, Kothagudem with regard to confirmation of certain acting workers.
- Ex. M2 True copy of the basis for man power assessment for the year 1984-85.
- Ex. M3 Photostat copy of the letter dt. 28-2-85 addressed to S.O. to C.E.M.D. S.C. Co. Ltd., Kothagudem to all G.Ms. Agents and Managers with regard to absenteeism relief provision regulation of workers in Mines and formation of panels for officiating arrangements.
- Ex. M4 Extract of latest authorised man power for underground Mines for the years 1985-86.
- Ex. M5 Statement showing the Seniority position on the basis of acting musters of the persons who have been acting in higher categories as and when required.
- Ex. M6 List of persons whose names are not included in the Union's claim statement but the Management agrees to promote as they stand in the order of merit basing on acting musters.
- Ex. M7 Representation dt. 18-8-81 made by Ch. Somaiah to the Colliery Managers, K.K. No. 1 Incline with regard to arrange to give him General Mazdoor job on Cat. I wages.
- Ex. M8 Representation made by G. Ramaswamy to the Deputy Chief Mining Engineer, Kalyani Khani No. 1 with regard to absorbed him as General Mazdoor on Cat. I wages in underground.
- Ex. M9 Representation made by J. Narasiah to the Deputy Chief Mining Engineer, Kalyani Khani with regard to absorbed him as General Mazdoor on Cat. I wages in underground.
- Ex. M10 Representation dt. 23-1-83 made by M. Bheema Rao to the Dy. C.M.E., K.K.I with regard to General Mazdoor category.
- Ex. M11 Representation made by P. Posham to the Colliery Manager K.K. No. 1 Incline with regard to General Mazdoor job Cat. I wages.
- Ex. M12 Representation dt. 17-8-81 made by C. Mysaiah to the Divisional Superintendent, Mandamarri with regard to General Mazdoor job Cat. I wages.

- Ex. M13 Representation made by B. Meenaiah to the Colliery Manager, K.K. No. 1 Incline with regard to General Mazdoor category job on Cat. I wages.
- Ex. M14 Representation dt. 16-1-83 made by B. Meenaiah to the Dy. C.M. Engineer, K.K. No. 1 Incline with regard to General Mazdoors post.
- Ex. M15 Representation dt. 23-1-83 made by Kolipaka Pedu Malliah to the Dy. C.M.E., K.K.I with regard to General Mazdoor category.
- Ex. M16 64th Annual Report and Accounts 1984-85.
- Ex. M17 Man power assessment for the year 1979-80.
- Ex. M18 Photostat copy of the letter dt. 28-2-86 addressed by S.O. to C&M.D. S.C. Co. Ltd., Kothagudem to all G.Ms. Agents, and Managers with regard to absenteeism relief provision, regularisation of workers in mines and formation of panels for officiating arrangements.
- Ex. M19 Basis for Man power assessment for the year 1984-85.

D. J. JAGANNADHA RAJU, Industrial Tribunal
[No. L-22011/27/84-D.III(B)]

का. आ. 3454:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार के मैसर्स ईस्टर्न कोलफील्ड्स लि. की पारबेलिया कोलियरी के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच अनुबध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-10-88 को प्राप्त हुआ था।

S.O. 3454.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Parbelia Colliery of M/s. Eastern Coalfields Limited and their workmen, which was received by the Central Government on the 21st October, 1988.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 9 of 1987

PARTIES :

Employers in relation to the management of Parbelia Colliery of M/s. E.C. Ltd.,

AND

Their workmen.

PRESENT :

Mr. Justice Sukumar Chakravarty Presiding Officer.

APPEARANCES :

On behalf of Employer—None.

On behalf of Workmen—None.

STATE : West Bengal

INDUSTRY : Coal

AWARD

By Order No. L-1201233/86-D.IV (B) dated 31st December 1986, the Government of India, in the Ministry of Labour, referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Parbelia Colliery of M/s. E. C. Ltd., P.O. Nootoria, District Purulia in terminating the services of Shri Sewjatan Singh, Pump Khalasi on 23-9-84 on the ground that he attained the age of superannuation, ignoring the

fact that his elder brother, Shri Sēw Pujan Singh, Security Guard is still working in the colliery was justified? If not, to what relief the workman is entitled?"

2. The case is called out. Nobody appears on either side inspite of service of notice upon both the Union and the Management. It appears from record that on the last dates also neither the Union including the workman nor the management appeared inspite of service of notice upon them. It appears that the workman and the Union are not interested to proceed with the Reference. The Management also appear to be not interested in the matter.

3. In the circumstances, I have no other alternative but to pass a 'No Dispute Award' and accordingly I do so.

This is my Award.

SUKUMAR CHAKRAVARTY, Presiding Officer

Dated, Calcutta, the
11th October, 1988

[No. L-19012/33/86-D.IV (B)]

R. K. GUPTA, Desk Officer

नई दिल्ली, 4 नवम्बर, 1988

का. आ. 3455:—केन्द्रीय सरकार, सिनेमा कर्मकार और सिनेमा थिएटर कर्मकार (नियोजन का विनियमन) अधिनियम, 1981 (1981 का 50) की धारा 22क द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निदेश देती है कि उस अधिनियम और उसके अधीन बनाए गए नियमों के अधीन धारा 23 द्वारा प्रदत्त शक्तियों के सिवाय, उनके द्वारा प्रयोग की जाने वाली सभी शक्तियों का प्रयोग सभी राज्य सरकारों द्वारा भी किया जाएगा।

[संख्या एस-61011/2/86-डेस्क(ए)/समन्वय]

इन्द्र सिंह, अवसर सचिव

New Delhi, the 4th November, 1988

S.O. 3455.—In exercise of powers conferred by section 22-A of the Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 (50 of 1981), the Central Government hereby directs that all the powers exercisable by it under that Act and the rules made thereunder except the powers conferred by section 23, shall be exercised also by the State Governments.

[No. S-61011/2/86-DI (A)/Coord.]

INDER SINGH, Under Secy.

नई दिल्ली, 4 नवम्बर, 1988

का. आ. 3456:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जूलोजीकल सर्वे आफ इण्डिया, दक्षिण क्षेत्र, हैदराबाद के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 4th November, 1988

S.O. 3456.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government

hereby publishes the award of the Central Government Industrial Tribunal Bangalore, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Geological Survey of India, Southern Region Hyderabad and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT BANGALORE

Dated 3rd October, 1988

PRESENT :

Shri B. N. Lalge, B.A. (Hons.), L.L.B Presiding Officer,
Central Reference No. 132/87

I PARTY :

Shri K. Rama Reddy Rep. by the General Secretary GSI Employees' Association, Southern Region, 6-1-72 Lakdi-ke-pool, Hyderabad.
Vs.

II PARTY :

The Senior Dy. Director General Geological Survey of India, Southern Regional Office, Hyderabad-500001.

APPEARANCES :

For the I party Sri Harikrishna S. Holla, Advocate.
For the II party Sri B. N. Dayananda Advocate.

AWARD

By exercising its powers under Section 10(1)(d) and (2A) of the I. D. Act, 1947, the Government of India, Ministry of Labour has made the present reference on the following point of dispute by its Order No. L-42012/153/86-D.II (B) dated 20-8-1987

POINT OF DISPUTE

"Whether the action of the management of Geological Survey of India, Southern Region, Hyderabad in terminating Shri K. Rama Reddy, Contingent Worker from service with effect from 20-10-1985 is justified? If not, what relief is the concerned workman entitled to?"

2. The General Secretary of the Geological Survey of India Employees' Association, Hyderabad has filed the claim statement. The contentions in the claim statement, in brief, are as follows.

He is the General Secretary of the Geological Survey of India Employees' Association, Hyderabad. He represents the workman Shri K. Rama Reddy. He has been authorised to file the claim statement on his behalf. Shri K. Rama Reddy was a skilled contingent worker. His date of birth as recorded in the seniority list of contingent workers published by the II party is 17-10-1928. Under the superannuating scheme of Government of India applicable to the workers of the Geological Survey of India, age of superannuation has not been prescribed for contingent workers of the Geological Survey of India. He was however, dismissed from service with effect from 20-10-1985. The Deputy Director General of Southern Region is the sole appointing authority of contingent workers. The order of dismissal was brought to the notice of the Regional Labour Commissioner, Hyderabad. The II party raised the issue of jurisdiction since at the relevant time, the said workman was working in the State of Karnataka. It was contended by the II party that his wages are paid and his service records are maintained at Hyderabad, but however, the conciliation proceedings were transferred to the Regional Labour Commissioner, Bangalore. Before the Regional Labour Commissioner the II party contended that Shri Rama Reddy had expressed desire to go on voluntary retirement due to old age and ill health and sought for compensation by his letter dated 15-10-1984. The application of Rama Reddy dated 15-10-1984 was disposed of by the Director (Drilling) on 15-10-1985. He did not suffer any infirmity during the said one year. His request for voluntary retirement was on the condition of compensation in lieu of voluntary retirement. Such an offer cannot be acted upon without payment of compensation. He had unblemished service record and no charges were framed against him. The dismissal

is illegal. He prays for reinstatement with all the consequential benefits.

3. The II party management has filed the counter statement and inter alia, it is contended as follows.

The claim statement is speculative and is not bona fide. The applicability of the I. D. Act to the contingent workers of Geological Survey of India is pending before the Hon'ble Supreme Court of India, in SLA (C) 758/86 against the judgements of the Hon'ble High Court of A. P. in writ appeal No. 295/78 declaring the Geological Survey of India as an industry. The Hon'ble Supreme Court has issued a direction that no award shall be passed during the pendency of the said appeal. The appeal is still pending. The question of passing of an award does not arise. The photostat copy of the order is enclosed at Annexure 'A'. The II party is not an industry within the meaning of Section 2(j) of the I. D. Act. The said workman was appointed as a skilled contingent worker on 17-4-1972 and at that time he had given his date of birth as 17-10-1928. In the seniority list of contingent workers maintained by the Department his date of birth is shown as 17-10-1928. The seniority list is prepared on the basis of the information furnished by the workman, at the time of initial engagement. At no point of time, he had submitted any proof in support of his date of birth. On 23-2-85, he made an oral request to the Director (Drilling) that he was aged about 70 years and he had sought for voluntary retirement, as per his representation dated 15-10-84. It shows that he had furnished false information regarding his age at the time of his initial appointment. His contention that he cannot be terminated unless on attaining the age of 60 years is not sustainable. It is false that he been dismissed from service with effect from 21-10-85 by the Director (Drilling) who had no authority. The Director (Drilling) was competent authority to engage or dismiss contingent workers. The Director released him on 20-10-85 in account of his voluntary retirement. The question of referring the matter to arbitration did not arise. A copy of his letter is enclosed at Annexure 'B'. The Director (Drilling) who has visited the drilling camp on 23-2-85 found him too weak and too old to perform any duty and he was not physically fit to turn out any work. On that day also, he made an oral statement before the Director that he was aged about 70 and too old to perform his normal duties. The Director conceded to his request and issued the release order with effect from 20-10-85. He was also informed that there was no provision for payment of compensation for voluntary retirement. It is a case of voluntary retirement and does not amount to retrenchment. He is not entitled to reinstatement or back wages etc. The reference may be rejected.

4. Thereafter, the I party has filed a rejoinder dated 18-1-88 and the contentions raised by the II party have been refuted.

5. The II party management has examined one witness and has got marked Exs. M-1 to M-6.

6. No witness has been examined for the I party.

7. The parties have been heard.

8. My finding on the point of reference is as follows.

The action of the management in terminating the services of Shri K. Rama Reddy, contingent worker from 20-10-1985 is not justified. He is entitled to the relief shown below.

REASONS

9. The only witness examined by the management is MW-1 Shri V. K. Kansal, Drilling Engineer of the II party. It appears in his evidence that the Geological Survey of India is an organisation doing preliminary investigations of all minerals in the country by scientific methods and that it is not a commercial organisation. He further states that it is not a public utility service and they do not supply any materials or goods to any one. He further adds they do not carry out any trade or business. In para 4 of his evidence, he further states that against the judgements of the Hon'ble High Court of Andhra Pradesh and Madhya Pradesh, certain matters are pending before the Hon'ble Supreme Court and they deal with the question whether the II party is an industry. The xerox copy of the order passed by the Supreme Court is at Annexure 'A' enclosed to the counter statement. The order relates only to the case and in the rejoinder in

Page 2, it has been explained as to how the said order binds only the parties and restricts that the awards pertaining to cases of W.A. 295/78 should not be passed. On going through page 2 of the rejoinder and the order at Annexure 'A' I find that there is no general stay relating to the case of any contingent worker and that there is no bar for passing an award in this case.

10. The learned counsel for the I party relied upon the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa, Supreme Court Labour Judgements—1950 to 1983, 6th Volume page 177. The authority indicates that where there is a systematic activity, organised by co-operation between employer and employee, the direct and substantial element is commercial, for the production or distribution of goods and services calculated to satisfy human wants and thus there is an industry in such an enterprise. It has been further laid down that absence of profit motive is not relevant and the true focus is functional. On going through the said authority, in the context of the facts placed before me, it emerges that the II party is an industry and that non-profit motive of the II party is of no avail.

11. In para 6 of his evidence, MW-1 Kansal has stated that on 15-10-84 the workman had given a written representation stating that he was too old and was not keeping good health and that he wanted to take voluntary retirement and wanted to know about the compensation. In para 19 of his evidence MW-1 concedes that he had given his application to the Director (Drilling) through the Field Officer and that Ex. M-1 is only the office copy and that the original could not be located. He further admits that Ex. M-1 was not signed in his presence. In para 20 it has been suggested to MW-1 that the workman did not give any representation on 15-10-84. It is clearly admitted by MW-1 in para 21 that he was not present when the workman met the Director personally and he has given evidence on the basis of the statement shown in the office copy of the representation. There is a further admission that Ex. M-1 does not contain the writing of the Director. The witness was further recalled on 22-8-88 and by that time the management had produced Ex. M-4. MW-1 has stated that Ex. M-4 is the document taken from Rama Reddy. He further adds that Ex. M-5 is a payment voucher and Ex. M-6 is a stamped receipt showing his signatures. In his cross-examination, MW-1 admits that the date of the document in Ex. M-4 is 15-10-84 and some typist must have typed the same. The portion marked as Ex. M-4 (a) was admittedly not written by him. It is conceded by MW-1 that the signature at Ex. M-4 (b) is of D. Praohakar. The said officer has not been examined. He admits that he does not know as to who has written the date as 15-10-84 at Ex. M-4 (c). He further admits that he does not know as to who has done the overwriting at Ex. M-4 (b). A specific question has been put to him that the documents at Exs. M-1 and M-4 are dated 23-2-85 and how is it that it is shown that they have been written on 15-10-84. The witness has stated that the original document was given on 15-10-84, but it was lost and another document of the same nature was obtained from Rama Reddy on 23-2-85. In Para 33 of his evidence, MW-1 further admits that the lower half portion of Ex. M-4 contains the notings and forwarding notes of the office whereas only the top portion of Ex. M-4 is of Rama Reddy. The upper typed portion of Ex. M-4 without the hand written portion of Ex. M-4 (a) shows that the workman wanted to know only the amount of compensation to which he was eligible since he had become aged and his health was not good to do work in the drilling field. The writing at Ex. M-4 (a) is intended to show that he wanted to take voluntary retirement. Even if it is supposed that the hand written portion of Ex. M-4 (a) is also that of the workman Rama Reddy, the document at Ex. M-1 or M-4 does not show that the workman Rama Reddy opted for voluntary retirement and requested for being relieved. Ex. M-2 is the letter dated 24-9-85 from the Director to the driller in-charge of the drilling camp. It refers to the endorsement of the driller dated 15-10-84 regarding Rama Reddy's request and he was thereby informed that there was no provision for compensation for contingent workers, when they opt to have voluntary retirement. Ex. M-2 further states that the driller in-charge was informed to communicate the said fact to Rama Reddy and release him from the camp with effect from 20-10-85. Ex. M-3 is a letter dated 15-10-85 issued by the driller in-charge to the workman Rama Reddy and it shows that a copy of the letter of the Director Ex. M-2 was enclosed and he was relieved on the forenoon of 20-10-85. In para 31 of his evidence MW-1 admits that prior to Ex. M-3 dated 15-10-85 the workman

was not told that he was not entitled to any terminal benefits. From the documents at Exs. M-1 to M-4 and these admissions made by MW-1 it is obvious that the workman Rama Reddy only intended to know about the compensation, to which he was entitled to, so that he can opt for voluntary retirement. It is an admitted fact that though he had given his original representation on similar lines of Ex. M-4 on 15-10-84, he had been actually relieved on 15-10-85 as per Ex. M-3 after about one year. It is not the case of the II party management that for the long period of one year the workman was doing nothing and he was kept on their pay roll for no work turned out by him. The documents at Ex. M-5 and Ex. M-6 do not advance the case of the management, since even if the signature at Ex. M-6 (a) is compared with the signature of Rama Reddy on Ex. M-4, the document Ex. M-4, itself does not prove that Rama Reddy had opted for voluntary retirement. Even by adopting liberal interpretation of Ex. M-4, it means that the workman intended to opt for voluntary retirement on knowing the quantum of compensation that he may get. Such a conditional expression of intention to go on voluntary retirement does not justify the action of the II party to relieve him from service on 15-10-85. As per the date of birth of the workman shown in the seniority list, he was liable to be superannuated at the age of 5. There is no case either of the I party or the II party that there are any prescribed rules for the superannuation of contingent workman. In that event, the provisions of the Industrial Employment (Standing Orders) Central Rules, 1946, Schedule IB, which came into force on 17-1-1983 will be applicable. As per Rule (3), the Age of retirement or superannuation of a workman shall have to be as agreed upon between the parties and when there is no such agreement, the superannuation shall have to be at the age of 58 years. Relieving him from service on 15-10-85, without giving him one month's notice of retrenchment or without paying him retrenchment compensation is violative of Section 25-F read with section 2 (oo) of the I. D. Act.

12. The learned counsel for the I party referred to the case of Desikechari Vs. the "Mail" (1961 II L.J., Page 771). The authority supports the contention of the I party that the word "to retire" would mean "to remove from service" and in such a case, it would be a case of removal and not retirement. In view of the principle laid down in the authority, it emerges that the II party has removed him from service and it is not a case of voluntary retirement.

13. As per rule (1) (iv) (b) of the said rules, the date of birth of a workman, once entered in the service card of the establishment shall have to be the sole evidence of his age in relation to all matters including fixation of the date of his retirement from the service. In view of the said rule, he ought to have superannuated on 16-10-1986. Now he has been retired on 15-10-85. Since he is beyond the age of 58, there cannot be any order for reinstatement. The payment voucher Ex. M-6 indicates that his wages were Rs. 620 p.m. He will be entitled only to the said back wages of 12 months, i.e. Rs. 620 × 12 months = Rs. 7,440.

14. In the result, an award is passed to the effect that the action of the management of the Geological Survey of India, Southern Region, Hyderabad in terminating the services of Shri K. Rama Reddy, Contingent worker with effect from 20-10-1985 was not justified and that the management shall pay him a sum of Rs. 7,440.

B. N. LAJGE, Presiding Officer
[No. I-42012/153/86-D.II (B)]

का. ग्रा. 3457.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसर्जन में, केन्द्रीय सरकार सेन्ट्रल सिल्वर बोर्ड के प्रबंधकों से सम्बन्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बैंगलोर के पंचाद को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 3457.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (15 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore, as shown in the Annexure, in

the industrial dispute between the employers in relation to the management of Central Silk Board and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT BANGALORE

Dated 3rd October 1988

PRESENT :

Shri B. N. Lalge, B.A. (Hons), L.L.B. Presiding Officer
Central Reference No. 189/87

I PARTY

Shri Ganesha, Sweeper
International Centre
for Training & Research
in Tropical Sericulture
Rep. by the President
Central Silk Board Employees
Union No. 17/1, 13th Cross Road
Mahalakshimpuram,
Bangalore-560036.

II PARTY

Member Secretary
Central Silk Board
United Mansions
Mahatma Gandhi Road,
Bangalore-560001.

APPEARANCES :

For the I party Shri B. N. Vijay Kumar President of the
Central Silk Board Employees Union.

For the II party Shri Shiveraj Patil, Advocate.

AWARD

By exercising its powers under Section 10(1)(d) and (2A) of the I.D. Act 1947, the Government of India, Ministry of Labour has made the present reference on the following point of dispute by its order No. L-42012/75/86-D.II(B) dated 20th January 1987.

POINT OF REFERENCE

"Whether the action of the management of Central Silk Board in terminating the services of Shri Ganesha, Sweeper, International Centre for Training and Research in Tropical Sericulture, with effect from 7-9-83 is legal? If not, to what relief the workman is entitled to?"

2. The I party Union has filed its claim statement and inter alia, it is contended as follows.

Shri Ganesha was appointed as a sweeper by an order dated 3-12-80 in the International Centre for Research in Tropical Sericulture, Central Silk Board, Mysore. He belongs to Scheduled Caste. He was discharging his duties satisfactorily. His appointment was extended by an order dated 3-1-1981. His services were terminated on 7-1-1983 for no reason. No enquiry was conducted against him. He had completed more than 240 days of work. He had worked for two years seven months and six days continuously. The II party is an industry. The termination of the services of the I party workman is in violation of Section 2(oo) and 25-F of the I.D. Act, since no notice was given and no compensation was paid to him. The workman then approached the Director, but with no avail. An award may be passed, directing the II party to re-instate him with all the consequential benefits.

3. The II party has filed its counter statement and inter alia, it is contended as follows.

The averment that Shri Ganesha was initially appointed as a sweeper by an order dated 3-12-80 is true. In 1980, the post of sweeper had fallen vacant. As per the recruitment rules the said post is required to be filled up through the Employment Exchange and also on an interview. Since it was a time consuming process, it was decided to appoint a person temporarily for a short period, till a regular appointment was made. Accordingly, it was filled up by his temporary appointment. It was a conditional appointment. It was made subject to termination at any time without any notice. Copy of the appointment order is at Annexure 'A'. The II party is not aware whether he belongs to Scheduled Caste. It is true that

his appointment was extended by one more month with effect from 3-1-81. It is false that his services were terminated all of a sudden on 7-1-1983. In June 1983, a regular appointment was made to the said post and one Shri T. S. Chikelingaiah was appointed to the said post. When a regular appointment was made, the temporary service of Shri Ganesha was terminated. That letter is at Annexure 'C'. By a letter dated 7-7-83 his services were terminated and it is at Annexure 'D'. His contention that he has put in 240 days of service is false. It is false that the provisions of Section 2(oo) or 25-F are attracted. The proviso to Section 25-F states that no such notice is necessary when the recruitment is made under an agreement which specifies the date for the termination of the service. The reference may be rejected.

4. On 9-5-1988, the II party examined one witness and got marked Exs. M-1 to M-5. The II party closed its case. Thereafter, the I party was called upon to adduce evidence. On 6-6-88 and 15-6-88, a prayer was made for the I party for time and time was granted. On 20-6-88, 23-6-88, 24-6-88 and 7-7-88, the I party and the representative of the I party have been absent. The side of the I party was closed for default and the matter was adjourned for final arguments. On 11-7-88 the II party was present. The learned counsel for the II party was heard. After that, the learned counsel for the II party made a submission that he may be permitted to file a copy of the judgement and he was granted time. On 10-8-88, he has filed an order passed in W.P. No. 8349 of 1988. He was heard further.

5. My finding on the point of reference is as follows.

The action of the management of the Central Silk Board in terminating the services of Shri Ganesha, Sweeper, International Centre for Training and Research in Tropical Sericulture, C.S.B. Mysore with effect from 7-9-1983 is illegal. He is entitled to the relief shown below.

REASONS

6. The main contention of the II party is that the I party workman was appointed as a stop-gap arrangement for a temporary period and soon after regular appointment was made for the said post, in accordance with the rules, his services were terminated and that the provisions of sub-clause (bb) of Section 2(oo) and the proviso to Section 25-F of the I.D. Act are applicable and the termination is not illegal.

7. The management has examined MW-1 Prer Kumar and his evidence shows that as a stop gap arrangement, the I party Ganesha was appointed for a period of one month as per Ex. M-2. The fact that MW-1 has been authorised to give evidence by the II party has been established by Ex. M-1, the letter of authorisation. In the counter statement, it is admitted that he was first appointed by a letter dated 3-12-80. The said document is Ex. M-2 itself. Para 2 of the said order shows that the appointment was for a period of one month or till filling up of the vacant post of Sweeper in the hostel, whichever is earlier. The evidence of MW-1 further shows that the regular post was not filled within one month and the management issued another memorandum as per Ex. M-3. Ex. M-3 reads as follows.
DR-03-4-80.

3-1-1981

Memorandum

Sub : Establishment International Centre for Training & Research in Tropical Sericulture—Shri Ganesha, Sweeper—continuation of services—regarding

In continuation of this Office Memorandum of even number dated 3-12-1980, Shri Ganesha, Sweeper, appointed purely on temporary basis with effect from 3-12-1980, is hereby given extension of service for a further period of one month from 3-1-1981, or till the post of sweeper is filled up on regular basis, whichever is earlier.

He may continue to work in the ICTRETS Hostel.

Sd/-

(Dr. M. N. Navasimhanna)
Director

Para 5 of the evidence of MW-1 then shows that one Chikkalingaiah was sponsored by the Employment Exchange and he was appointed and thereby the service of I party Shri Ganesha was terminated as per the documents at Exs. M-4 and M-5. Ex. M-4 is a letter dated 13-6-1983 by the Joint Secretary to the Director. It conveys the approval of the competent authority for the selection and appointment of Shri T. S. Chikkalingaiah for the post of a sweeper in the said institute as sought for by him by his letter dt. 12-4-1983. Para 2 of the letter further shows that the Director was requested to issue necessary appointment order and to report about the candidate reporting for duty. The letter further states that the services of Shri Ganesha temporary sweeper may be terminated on the day the regular appointee reports for duty. Ex. M-5 is a Memo dated 7th July, 1983 and it reads that consequent upon the appointment of a sweeper on regular basis, the services of Shri Ganesha appointed as sweeper stood terminated with effect from 7th July, 1983. There is neither any case pleaded by the II party nor any evidence produced to show that before the period of one month stipulated in Ex. M-3 expired, the II party has issued any other order extending the period of appointment for a specific period of one month or for any other specific period as had been done in Ex. M-2 or Ex. M-3. Ex. M-3, as shown above, makes it very clear that the extension of service was only for one month from 3rd January, 1981 or till the post of sweeper was filled up on regular basis, whichever was earlier. The period of one month was obviously earlier. As a necessary corollary, it follows that after 3rd February, 1981, there was no order of appointment for any specific period. It is not the case of the management that the I party Ganesha was informed that his services continued to be on temporary basis for any length of time with effect from 3rd February, 1981 until a regular appointment is made for the said post. The order passed in W.P. 8349/88 applies to a case where temporary appointments are made from time to time and such appointment is brought to an end on making a regular recruitment for the said post. Para 3 of the said order makes it very clear that the members of the petitioner association had been appointed in the first instance during the period 1982 to 1985 on the dates mentioned against their names for a period of 6 months and at the end of 6 months their services were being terminated and they were being re-appointed once again for a period of 6 months and by the said process they had been continued in service. The facts of the case at hand are entirely different, since at the end of the period of appointment shown in Ex. M-3, the management has not issued any fresh order showing that another appointment was made for any specific period. After 3rd February, 1981, the workman in this case has continued to work on the same terms and conditions, as regards his designation and wages, without any stipulation regarding the period. Thus, the provisions of sub-clause (bb) of Section 2(o) or the proviso to Section 25-F are not attracted. The termination of his services as per Ex. M-5, without following the conditions laid down in Section 25-F of the I.D. Act makes the action of the management illegal. There is no case of the II party that any notice of retrenchment of one month or any retrenchment compensation for the period of service put in by him from 3rd December, 1982 to 7th July, 1983 had been paid to him. Now, it is a well established principle of law that if the notice of termination and retrenchment compensation have not been given as provided in Section 25-F of the I.D. Act, the entire action of the management will be illegal. There is no reason as to why the workman should not get the full back wages and all the consequential benefits, in addition to the reinstatement.

8. In the result, an award is passed to the effect that the action of the management of the Central Silk Board in terminating the services of Shri Ganesha, Sweeper, with effect from 7th September, 1983 is illegal and it is directed that the II party management shall reinstate him forthwith and grant him continuity of service with full back wages and other consequential benefits.

B. N. LALGE, Presiding Officer
[No. L-42012/75/86-D.II(B)]
HARI SINGH, Desk Officer

नई दिल्ली, 4 नवम्बर, 1988

का. अ. 3458 :--औद्योगिक विवाद अधिनियम,

2830 GI/88-5.

1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार, मैसर्स भारत कोकिंग कोल लि. का महेशपुर कोलियरी के प्रबंधन से सम्बद्ध नियोक्तों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं. 1, धनबाद के पंचाट को प्रकाशित करती है।

New Delhi, the 4th November, 1988

S.O. 3458.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Maheshpur Colliery of M/s. Bharat Coking Coal Limited and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 14 of 1983

AND

PARTIES:

Employers in relation to the management of Maheshpur Colliery of Messrs Bharat Coking Coal Limited.

AND

Their Workmen.

PRESENT:

Shri S. K. Mitra, Presiding Officer.

APPEARANCES:

For the Employers: Shri G. Prasad, Advocate.

For the Workmen: Shri D. Mukherjee, Secretary Bihar Colliery Kamgar Union.

STATE:

INDUSTRY: Coal.

Dated, the 22nd September, 1988

AWARD

By Order No. L-20012/326/82-D.IIA. dated, the 16th/14th March, 1983, the Central Government in the Ministry of Labour, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Maheshpur Colliery in Area No. III of Messrs. Bharat Coking Coal Limited, Post Office Sonardih, Dist. Dhanbad in removing the names of the 8 workmen mentioned in the Annexure below from the muster roll for their unauthorised absence in 1976 was justified? If not, to what relief are these workmen entitled?"

ANNEXURE

Sl. No. Name of the workmen

1. Shrinati Chandmoni Bhuini
2. Shrinati Chandmoni Bhuini No. 2
3. Shrinati Dhaneshwar Bhuini
4. Shrinati Marpi Bhuini
5. Shrinati Somri Bhuini
6. Shrinati Jaswa Bhuini
7. Shrinati Fudo Bhuini
8. Shri Amrit Bhuini

2. The case of the management, details apart, is as follows.

All the 8 female worker were employed as casual wagon loaders in Jogidih Colliery; they were transferred to Maheshpur Colliery by order of General Manager, Area No III which was communicated by letter No. 8050 dated 26/27-4-76.

The respective dates of assumption of duties and absence from work of the concerned female workers are as follows:

- (1) Smt. Chandmoni Bhuini—joined on 15-5-76 worked upto 10-10-76 absented from 11-10-76.
- (2) Smt. Jaswa Bhuini—I.D. Card No. C/3662 joined on 22-5-76 absented from 288-76.
- (3) Smt. Chandmoni Bhuini No. 2—J.D. Card No. 3646 joined on 15-5-76 worked upto 20-8-76 absented from 21-8-76.
- (4) Smt. Narni Bhuini—I.D. Card No. C/3649 joined on 13-5-76 absented from 21-12-76.
- (5) Smt. Semaru Bhuini—joined on 9-10-76 worked upto 10-10-76 absented from 11-10-76.
- (6) Smt. Fudo Bhuini—I.D. Card No. 3657 joined on 15-5-76 worked upto 10-10-76 absented from 11-7-76.
- (7) Smt. Dhaneshwar Bhuini—J.D. Card No. 3648 joined on 10-10-76 worked upto 21-12-76 absented from 22-12-76.
- (8) Smt. Amrit Bhuia, I.D. Card No. C/3654 joined on 15-5-76, worked upto 10-7-76 absented from 11-7-76.

Since each of the concerned female workers absented from duty without leave, information or permission with effect from the date noted against each, their names were removed from the rolls of the colliery in February, 1979. During the preceding 12 months beginning from February, 1973 to February, 1976 none of them actually worked for 240 days and therefore they were not in continuous service for a period of one year as contemplated under Sec. 25B of the Industrial Disputes Act. Hence, they were not eligible and entitled either to notice/notice pay, retrenchment compensation or any other benefit as contemplated under Section 25F of the Industrial Disputes Act. It was presumed that they were not interested in their employment and abandoned their services owing to the long absence. In the circumstances, the action of the management in removing their names off the muster roll with effect from February, 1979 for their unauthorised absence is fully justified and the concerned workers are not entitled to any relief whatsoever.

3. The case of the concerned workers, as appearing from the written statement submitted by the sponsoring union, is as follows:

The concerned female workers had been working as permanent workmen since long with unblemished record of service. They were initially appointed against permanent vacancy at Akashkinari colliery and were transferred to Maheshpur colliery in 1976. They were permanent wagon loaders. After joining Maheshpur colliery they absented from duty for unavoidable circumstances without taking any prior permission. Chandmoni Bhuini, Jaswa Bhuini, Chandmoni Bhuini No. II, Marni Bhuini, Somari Bhuini, Fudo Bhuini, Dhaneshwar Bhuini and Amrit Bhuia started absented from duty from 10-10-76, 21-12-76, 10-10-76, 10-7-76, 21-12-76 and 10-7-76 respectively. After recovery from illness they reported for duties, but the management instead of allowing to resume their duties informed them orally that their names have been removed from muster roll. The management of the colliery, on representation made by Rajendra Singh, local Branch Secretary of the union assured that the matter would be referred to Head Quarter within ten days. But nothing had come out of the assurance. The union has alleged that seeing the anti-labour attitude of the management and after waiting patiently on the assurance of the management, it was constrained to raise an industrial dispute in 1980. During the conciliation proceeding Sri Surendra Singh, Dy. Personnel Manager appeared on behalf of the management and assured the union in presence of Asstt. Labour Commissioner (C), Dhanbad, that the matter would be resolved amicably and on the assurance of the management, the union withdrew the dispute, but the management paid scanty respect for the assurance. The union after waiting patiently for about one year represented the matter once again to Dy. P.M. by letter dated 29-3-1982. But the management did not spare any paid to give reply to the said letter. In the circumstances, the union was constrained to raise the present dispute. As per provisions of the Standing Order the management has got no legal right to remove the names of the concerned female workers from the muster roll for unauthorised absenteeism. No chargesheet was issued and no domestic enquiry was held. Each of them has put in more than 240 days attendance in

each calendar year and so removing their names from muster roll without complying with the mandatory provisions of Sec. 25F of the Industrial Disputes Act is illegal. The services of the concerned workmen were not terminated by the competent person. As per decision of the Central Consultative Committee, all the concerned workmen are entitled to re-employment. It is alleged that the action of the management in removing the names of the concerned workmen is not only illegal and arbitrary, but also discriminatory. In the circumstances, the union has prayed that the present reference be answered in favour of the concerned workmen.

4. In rejoinder to the written statement of the union, the management has stuck to the position that the concerned workman had absented from duty without leave, information and permission, but they were informed that their names were removed from the muster rolls in February, 1979. The management has submitted that termination of service on the ground of continued ill health does not constitute retrenchment. It has been asserted that one of the concerned workmen have completed 240 days attendance during the preceding 12 months from March, 1978 to February, 1979. Instant case is not a case of dismissal or discharge, and the names of the concerned workers were rightly removed from the muster rolls.

5. In rejoinder to the Written statement of the management the sponsoring union has asserted that the concerned workers were appointed during the time of erstwhile employer as permanent wagon loader against permanent vacancy. They had put in 240 days attendance in a calendar year while working at Jogidih colliery/Akashkinari colliery and after regularising them in service as permanent workers, the management transferred them to Maheshpur colliery. Due to some unavoidable circumstances they absented from duties from the dates as mentioned in the written statement of the management. Absence from duty without taking any leave is misconduct as per provisions of Standing Order. The management terminated the services of the concerned workmen without following mandatory provisions of Standing Order and in violation of Section 25F of the Industrial Disputes Act.

6. The management has examined two witnesses and laid in evidence some documents which have been marked Ext. M-1 and M-2. On the other hand, the sponsoring union has examined one of the concerned female workers and laid in evidence certain documents which have been marked Ext. W-1 and W-2.

7. The case of the sponsoring union is that all the concerned female workers were originally appointed at Akashkinari colliery against permanent vacancies as wagon loader. The management has admitted the position that all of them were employed as wagon loaders, not as permanent wagon loaders, but as casual wagon loaders. Anyway, the management has disputed the entire statement of the sponsoring union that all the concerned female workers were originally appointed at Akashkinari colliery against permanent vacancies. I cannot comprehend as to why the management disputed the position that the concerned female workers were originally appointed at Akashkinari colliery. Because of the fact that the documents produced by the management bear out the position that they were appointed originally in Akashkinari colliery. This I state with reference to Identity Card Register of the concerned female workers maintained at Akashkinari colliery. The Identity Card Register reveals the following facts with regard to names, designations and date of employment with regard to the concerned female workers:

Name	Designation	Date of appointment
1. Chandmoni Bhuini	Casual	6-9-73
2. Chandmoni Bhuini-II	-do-	8-9-73
3. Dhaneshwar Bhuini	-do-	5-9-81
4. Marni Bhuini	-do-	7-9-73
5. Somari Bhuini	-do-	7-9-73
6. Jaswar Bhuini	-do-	5-9-73
7. Fudo Bhuini	-do-	8-9-73
8. Amrit Bhuia	-do-	7-9-73

W.W. 1 Somari Bhuini, one of the concerned female workers has stated that she was appointed as wagon loader in Akashkinari colliery and other concerned workers who are her co-workers were also appointed in Akashkinari Colliery. The order of transfer dated 10/13-4-76 passed by the management Ext. W-1 reveals that the concerned female workers along with others were transferred from Akashkinari colliery to Jogidih Unit of Area No. III of M/s. B.C.C. Ltd. with immediate effect, but not later than 17-4-76. Thus, it has been established by unimpeachable evidence that the concerned female workers were appointed initially at Akashkinari colliery as wagon loaders. It is also established that from Akashkinari colliery all of them along with others were transferred to Jogidih Unit of M/s. B.C.C. Ltd. as stated above and from Jogidih Unit they were again transferred to Maheshpur colliery by order dated 24/25-9-76. The management has disputed the appointment of the concerned female workers in Akashkinari Colliery. In view of the evidence discussed above and the evidence emerging from the documents produced by the management even I consider that this denial is nothing but a stereotype denial which smacks of incomprehension and lack of application of mind.

8. The management has contended that all the female workers were employed as casual wagon loaders while the case of the sponsoring union is that they were appointed as wagon loaders against permanent vacancies. Admittedly, Model Standing Order for Industrial Establishment in Coal Mines is applicable to the collieries concerned. Clause 3 of the said Model Standing Order lays down classification of workmen in the following manner:

"Workmen" shall be classified as—

- (i) permanent;
- (ii) Probationers;
- (iii) badlis or substitute,
- (iv) temporary;
- (v) apprentices; and
- (vi) casual.

The casual workman has been defined in clause 3(g) which runs as follows:

"A 'casual' workman who has been engaged for work which is of an essentially casual nature." Admittedly, the concerned female worker were appointed as wagon loaders. Wagon Loading in coal industry is not a casual process, but a continuous one. As a matter of fact W.W. 1 Somri Bhuini has stated emphatically that wagon loading is a continuous nature of job and they were doing their job continuously. None of the two witnesses for the management both of Maheshpur colliery has stated anything to show that the job of wagon loading in the colliery was not a continuous process. Thus, it is seen that all the concerned female workers were engaged for work which was not of an essentially casual nature. This being so, the contention of the sponsoring union that all the concerned female workers were appointed as wagon loaders against permanent vacancy is bolstered up by the nature of job performed by these female workers.

9. Anyway, the case of the management is that all the concerned female workers were engaged as casual wagon loaders. In support of this contention the management has produced the Identity Cards of the concerned workmen maintained at Akashkinari colliery (Ext. M-2) and the Bonus Register maintained at Maheshpur colliery (Ext. M-1). M.W. 2 Pradip Kumar Singh who is clearing to P.O. has stated that all the concerned female workers were casual workers. On the other hand, W.W. 1 Somri Bhuini has stated that before they started absents from duty they worked for 240 days in a calendar year and that they were permanent workmen. In this connection I must state one salient fact which considerably weakens the case of the management. By petition dated 29-3-88 the sponsoring union called for attendance register in respect of the concerned workmen for the period 1974, 1975 and 1976 and certain other documents. The management has not produced these documents nor has it provided any comments on the petition submitted by the sponsoring union. Admittedly, Attendance Register for the period in question is under the custody of the management and adverse presumption must perforce be drawn against the management for non-production of this document.

In the Identity Card Register the designations of the concerned female workers has been described as casual. From the Bonus Register of Maheshpur Colliery it appears that the concerned female workers have rendered attendance for a few days in 1976 presumably after their transfer to that colliery. It must not be forgotten that all these female workers were appointed in the early part of September 1973 and posted to Akashkinari Colliery. I have already pointed out that they were transferred to Jogidih Unit of M/s. B.C.C. Ltd. by order dated 10/13-4-76 and by another order dated 24/25-9-76 they were transferred to Maheshpur colliery. Admittedly, all of them started absents from duty as described hereinafter:

- (1) Smt. Chandmoni Bhuini—joined on 15-5-76 worked upto 10-10-76 absented from 11-10-76.
- (2) Smt. Jaswa Bhuini—I.D. Card No. C/3652 joined on 22-5-76 absented from 28-8-76.
- (3) Smt. Chandmoni Bhuini No. 2 I.D. Card No. 3646 joined on 15-5-76 worked upto 20-8-76 absented from 21-8-76.
- (4) Smt. Marni Bhuini, I.D. Card No. C/3649 joined on 13-5-76 absented from 21-12-76.
- (5) Smt. Semaru Bhuini—joined on 9-10-76 worked upto 10-10-76 absented from 11-10-76.
- (6) Smt. Fudo Bhuini—I.D. Card No. 3657 joined on 15-5-76 worked upto 10-10-76 absented from 11-7-76.
- (7) Smt. Dhaneshwar Bhuini—I.D. Card No. 3648 joined on 10-10-76 worked upto 21-12-76 absented from 22-12-76.
- (8) Smt. Amrit Bhuia, I.D. Card No. C/3654 joined on 15-5-76, worked upto 10-7-76 absented from 11-7-76.

Thus, it appears that they started absents from duty after joining their duties in Maheshpur colliery. Between the period from the early part of September, 1973 till their transfer and assumption of duty in April, 1976 in Jogidih Unit they were posted to Akashkinari colliery. It has been claimed by the concerned female workers that all of them put in 240 days attendance in a calendar year. The management has attempted to disprove this by producing the Bonus Register of Maheshpur colliery. But they were transferred to Maheshpur colliery by order dated 24/25-9-76. The management has not produced any record with regard to the attendance of concerned female workers from the date of their joining service till their transfer to Maheshpur colliery. Sponsoring union has called for the Attendance Register in respect of the concerned female workers, but the management has not produced it. In the circumstances, I cannot but hold that had the Attendance Register been produced it would have borne out the claim of the concerned female workers that they achieved attendance of 240 days in a calendar year.

10. There is no dispute that all the female workers started absents from duties without leave from different dates as mentioned before and consequently the management removed the names from the muster roll of the colliery. MW-1 S. P. Singh who is clearing to P.O. has stated that since the concerned female workers absented themselves from duty continuously their names were removed from the muster roll in February, 1979. Removal of name from the muster roll is retrenchment and the management cannot do so without complying with the statutory provisions of Section 25F of the Industrial Disputes Act. Admittedly, the management has not in the instant case complied with the provisions of Section 25F of the Industrial Disputes Act before removing the names of the concerned female workers from the muster roll of the colliery. This being so, that action of the management in removing the names of the concerned workers from the muster roll of the colliery even on account of their unauthorised absence is considered unjustified and illegal.

11. The action of the management is not sustainable on another ground too. Clause 10(e) of the Model Standing Order for Industrial Establishment in Coal Mines provides that notwithstanding anything mentioned above in the rules, any workman who over-stays his sanctioned leave or remains absent without reasonable causes will render himself liable for disciplinary

action. Clause 17 of the said Model Standing Order envisages disciplinary action for misconduct and Clause 17(i)(a) envisages continuous absence without permission and without satisfactory cause for more than ten days is a misconduct. Admittedly, the concerned female worker were absent without leave or permission. The management considered that their absence was without any satisfactory cause. Even so, the management cannot remove their names from the muster roll without taking disciplinary action against them as contemplated in Rule 17 of the said Model Standing Order. The relevant provisions of the Model Standing Order provides that the employer shall conduct enquiry in respect of the misconduct of any workman and shall normally complete the enquiry within ten days. Admittedly, the management has not made any enquiry into misconduct of the concerned female workers before taking precipitate action against them by removing their names from the muster roll. The Hon'ble Supreme Court has held as follows in the case reported in 1982(1)LLJ. 330 (L. Robert D'Souza Vs. Executive Engineer, Southern Railway and another) :

"Absence without leave constitutes misconduct and it is not open to the employer to terminate service without notice and enquiry or at any rate without complying with the minimum principle of natural justice." Admittedly, the Model Standing Order prescribes mode, manner and methodology of terminating service of a workman and admittedly the procedure therein prescribed having not been carried out the termination is void and invalid.

12. The action of the management of Maheshpur colliery in Area No. 11 of M/s. B.C.C. Ltd., Dhanbad, in removing names of the concerned workmen from the muster roll for their unauthorised absence from 1976 is not justified.

13. It appears that almost immediately after the names of the female workers were removed from the muster roll of the colliery the union took up the matter with the management. But the management allowed the matter to drift away and in the circumstances the union was constrained to raise an industrial dispute for the first time before the Asstt. Labour Commissioner (C), Dhanbad by letter which was received by office of Asstt. Labour Commissioner (C) on 17-5-80. It appears that the union withdrew the dispute in the hope of settlement and when the settlement became a distant cry the union again raised a dispute over the matter on 22-6-82 by letter dated 28-5-1982. This position is borne out from the conciliation file produced by the Asstt. Labour Commissioner (C), Dhanbad, after it was called for by this Tribunal at the instance of the sponsoring union.

14. In the circumstances I hold that all the concerned female workers except Smt. Amrit Bhuia (Sl. No. 8 of the annexure to the schedule) who is dead according to WW-1 Somari Bhuini, are entitled to be reinstated in service with full back wages from 17-5-1980 treating their absence before the said date as absence on leave without pay. Award is made accordingly.

In the circumstances of the case I award no cost.

S. K. MITRA, Presiding Officer

[No. L-20012/326/82-D.II(A)/D.IV(A)]

का. घा. 3459 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैसर्ज भारत कोकिंग कोल लि. का लोयाबाद कोलियरी के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2) धनबाद के पंचाट को प्रकाशित करती है।

S.O. 3459.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Loyabad Colliery of M/s. Bharat Coking Coal Limited and their workmen.

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL (No. 2) AT DHANBAD
PRESENT :

Shri I. N. Sinha,
Presiding Officer.

Reference No. 100 of 1986

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act., 1947.

PARTIES :

Employers in relation to the management of Loyabad Colliery of M/s. Bharat Coking Coal Limited and their workmen.

APPEARANCES :

On behalf of the workmen.—Shri J. P. Singh, Advocate.
On behalf of the employers.—Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the 30th September, 1983

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012 (273)/85-D.II(A), dated, the 11th February, 1986.

SCHEDULE

"Whether the demand of Rashtriya Colliery Mazdoor Sangh for regularisation of services of Smt. Sumita Sen as Craft Teacher in Clerical Gr. II at the Women Welfare Centre, Baby Creche, by the management of Loyabad Colliery of M/s. Bharat Coking Coal Limited, is justified? If so, to what relief is Smt. Sumita Sen entitled and from what date?"

The case of the workmen is that in 1976 the Govt. of India evolved several schemes for the benefit of down-trodden section of the society and special stress was laid on the welfare of women. At the initiative of the Central Govt. public undertakings evolved a scheme which was known as Community development. M/s. B.C.C. Ltd., opened also a department of community department at the headquarters under whose direction centres were started in different collieries for implementation of the suitable schemes. In November, 1976 Loyabad Colliery of M/s. BCCL started a welfare centre in which the concerned workman Smt. Sumita Sen was appointed as Craft teacher. She happened to be the wife of a workman in Loyabad Colliery. She had obtained a course of training in tailoring, needle craft, book binding, physical training, house keeping etc. from the Association of All India Women's Conference, Labour and Social Service camp at Baisnabghata, Guria, 24 Parganas. She got certificate for having passed the training on 8th April, 1960. She also obtained certificate for having passed the final examination in advance needle work from the Lady Brabourne Final diploma examination dated 3-5-66 signed by the Chief Inspector, Women education, West Bengal. Seeing her qualification the management appointed the concerned lady to look after the Welfare Centre and she started tutoring needle work to the ladies of the colliery staff and their children. The said centre became very popular and is still continuing. The records of colliery as well as that of the G. M. Sijua area show that the concerned lady was holding classes daily from 9 A.M. to 2 P.M. as Craft Teacher on all working days in the Govt. welfare centre at Baby creche Loyabad. The female employees of Loyabad colliery, Kankane colliery and Loyabad Coking plant were taking regular training under the concerned lady. Shri P. R. Sinha, G. M. of Sijua area recommended her case for permanent absorption in M/s. BCCL vide letter dated 6-3-82 addressed to the G. M. Personnel Karmik Bhawan. Her case was also taken with the Addl. Chief Personnel Manager (M.P.&N.) M/s. BCCL Karmik Bhawan by Dy. Chief Mining Engineer, Loyabad Colliery giving all acts and figures of the case vide his letter dated 2-2-84. In spite of all efforts made by the Colliery Manager and the area, the headquarters of M/s. BCCL did not regularise the

services of the concerned lady as Craft Teacher. It was pointed out specifically to the management that as per the Wage Board Recommendation Vol. I Chapter VIII Group-G at page-81 the concerned lady is entitled as Craft Teacher in Clerical Grade-II with effect from November, 1976. The concerned lady is a workman as per the definition of the Mines Act. When the concerned lady and her Union did not succeed, an industrial dispute was raised before the KLC(C), Dhanbad. During the conciliation the KLC(C) deputed the LEO(C), Dhanbad to make an enquiry and the LEO(C) after examining the Welfare Centre submitted a report to the KLC(C), Dhanbad fully supporting the case of the concerned lady for her regularisation in Grade-II Clerical with effect from November, 1976. In spite of the said report of the LEO(C) the management did not settle the matter and after the conciliation ended in failure the present reference was made to this Tribunal for adjudication. The concerned lady had suffered a great monetary loss on account of the adamant attitude of the management in denying Clerical Grade-II to her and not regularising her in Clerical Grade-II from November, 1976. On the above facts it is submitted that the services of the concerned lady as craft teacher should be regularised with effect from November, 1976 and she should be paid the difference of back wages between the proper emolument of Clerical Grade-II and the amount which she has been receiving per month from the management.

The case of the management is that the case of the concerned lady being a craft teacher cannot be referred to the Tribunal as the dispute does not relate to mine and the concerned lady is not an employee of the Mine. It is also stated that a Teacher is not a 'workman' within the definition of Section 2(s) of the I.D. Act and hence the present reference is not arising out of any industrial dispute.

The concerned lady was never employed by the management to carry on any work. The management did not even evolve any scheme of community development in the collieries or opened any centre at the different collieries for the Welfare of women and children of the employees. The management sometimes provided assistance to voluntary organisation for opening up club, women welfare centre cooperative etc. but did not employ any person and did not manage those organisations. The management did not appoint the concerned workman Smt. Sumita Sen to look after Welfare Centre as Craft teacher. The management is not aware of her qualifications. The Women welfare centre at Loyabad colliery was opened by the Staff and workers voluntarily and the management simply provided the building. The students themselves were required to bear the expenses. The concerned lady voluntarily took the job of training at the suggestion of her husband and friends as social measure. In other collieries the staff and workers did not come forward to establish such a unit and as such no exist in any other collieries. The management grants honorarium at its own discretion. The management has no direct involvement in such organisation in any colliery. It is admitted that the management was granting an honorarium of Rs. 75 per month to the concerned lady. The Govt. did not accept the recommendation of the wage Board given in Vol. I Chapter VIII Group-G at page-81 as regards teacher and the teachers are not the workmen in Clerical Grade-II. As the management has not employed the concerned lady to work as Craft Teacher there was no question of her regularisation by the management and as such she is not entitled to any relief.

The points for determination in this reference are (1) whether the concerned lady is a workman under the Industrial Dispute Act and (2) whether the concerned lady is entitled to be regularised as Craft Teacher in Clerical Grade-II at the women Welfare Centre/baby creche by the management of Loyabad Colliery.

The workmen examined two witnesses in support of their case and produced documents which have been marked Ext. W-1 to W-10. The management neither examined any witness nor produced any document in the case.

The first question to be decided in this case is whether the concerned lady being craft teacher is a workman under Section 2(s) of the I.D. Act. It has been submitted on behalf of the management that the concerned lady being

a teacher is not a workman. In support of the submission, the management has referred to a decision reported in AIR, 1988 Supreme Court page 1700. Their Lordships held in the said case "We are of the view that the teachers employed by the educational institutions where the said institutions are imparting primary, secondary graduate or post-graduate education cannot be called as 'Workman' within the meaning of Section 2(s) of the I.D. Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or noble vocation." On reference to Section 2(s) of the I.D. Act it will appear that the definition of workman does not include a person employed in teaching or giving any technical training to persons. In the present case it will appear that the concerned lady has stated as WW-2 that she was working as Craft teacher in a school located in baby creche centre at Loyabad. She has stated that she is also incharge of literacy campaign in the colliery among the ladies. In cross-examination she has stated that she teaches the illiterate ladies and she teaches the needle work to the girls. Further she has stated that the ladies and children of the employees being their own need and other materials for learning the craft and the slate and pencil which are provided to the creche children is used in teaching the adult illiterate ladies. That is the sole evidence regarding the work of teaching being performed by the concerned lady. WW-1 has stated that the concerned lady is a craft teacher but he has not gone inside the said craft centre to see what is being done there and no member of his family comes to the said craft centre. Thus WW-1 has absolutely no idea as to what specific crafts are being taught to the ladies and children of the employees. Admittedly there was no regular school where the concerned lady was a craft teacher. It was actually a creche centre in which the craft teaching was done. WW-1 has stated that the children of the lady workman of the colliery are kept in the baby creche during their duty hours and that a creche incharge and Aya are posted in the said Baby creche to look after the children. He has also stated that the duty hours of the creche incharge and Aya are during the duty hours of the female employees. He has stated that the female workers do not work in the night and they work only at the day hours. It will thus appear that some provision was made in the creche centre for craft teaching by the concerned lady.

The concerned lady WW-2 has stated that she has got appointment letter but she has not filed it in the case. If she had got really an appointment letter from the management there was no reason as to why she would not have filed it. The non-production of the appointment letter therefore shows that the concerned lady did not get any appointment letter. The case of the management is that it had never appointed the concerned lady as a Craft teacher and as such we cannot expect any document from the management to prove the negative.

The case of the management is further strengthened by the evidence of WW-2 when she has clearly stated that she is getting honorarium as Craft Teacher. This itself shows that the concerned lady was never appointed by the management as Craft Teacher and that the management was only paying her honorarium and thus helping the centre so that women and children of the employees may have craft teaching. The said evidence of the concerned lady shows that she was not being paid as salary but she was being paid honorarium for craft teaching.

No doubt, correspondence Ext. W-1 dated 22nd May, 1982, W-2 dated 22nd February, 1984, W-3 dated 22nd January, 1984, W-4 dated 6th March, 1982, W-5 dated 24th November, 1984 and W-6 dated 10th March, 1983 will show that the colliery authorities and the area office were making demand for regularising the concerned lady as craft teacher but it is no where stated that she was appointed by the management as Craft Teacher. Ext. W-3 is a letter from the Dy. Chief Mining Engineer to the Addl. Chief Personnel Manager that she was getting Rs. 75 per month through voucher. As admitted by the concerned lady WW-2 that she was getting an honorarium, it was quite natural that she was being paid honorarium through voucher. WW-2 has stated in her cross-examination that the appointment in the

colliery is made by the headquarters of BCCL and after the appointment letter is issued by the headquarter there is posting in the colliery. There is no witness who has come forward and stated that the concerned lady was appointed as Craft teacher by the headquarters. It is thus clear that there was no valid appointment of the concerned lady as craft teacher by the headquarters of BCCL which is the only authority to give employment to a person. The evidence in the case regarding the duties performed by the concerned lady, it will appear that she was teaching needle work and she was also teaching the illiterate ladies. It is no where stated that she was doing herself any skilled or unskilled manual work, technical work, supervisory work or clerical work. Thus imparting of education in needle work and teaching to the illiterate ladies cannot be said to be the work of a 'workman' as defined under Section 2(s) of the I.D. Act. In my opinion, the concerned lady being a craft teacher cannot be said to be a 'workman' as defined under Section 2(s) of the I.D. Act.

Point No. 2

It is admitted case of the parties that the concerned lady is educating the illiterate women and imparting needle work to the ladies and dependents of the employees. As the concerned lady is not covered under the definition of Section 2(s) of the I.D. Act, the Tribunal cannot order for the regularisation of the concerned lady as a craft teacher.

The workmen in the W.S. have referred to Coal Wage Board Recommendation Chapter VIII at page 81 of Vol. I Para-G which deals with Teacher. It has given the existing designation of the teacher with their existing basic scale of pay, its new designation, grade and new consolidated basic scale of pay. The concerned lady is claiming clerical Grade-II in accordance with the provision made for teacher at page 81 of Wage Board Recommendation. The concerned lady has produced her certificates regarding her passing the technical subjects of needle craft, tailoring and needle work but she has not filed any certificate to show if she is a matriculate or has passed any lower examination from any recognised school. The Wage Board in the referred paragraph has provided to Clerical Grade-I, to Graduate teacher, Clerical Grade-II to Matriculate trained teachers, and clerical Grade-III to Matriculate untrained teachers non-matriculate trained teachers and one Grade-F is provided for non-matriculate untrained teachers. The case of the concerned lady is not covered in any of the new designation shown in the referred paragraph. In fact she has not produced any certificate to show that either she has passed Matriculation or had passed any class of secondary school. Moreover the reference of trained teacher in the said para is in respect of the persons who are trained in the subject of teaching and it does not include or mean trained teaching in respect of craft teachers. In the above view of the matter also the concerned workman is not entitled to the scale of pay of any of the grades of teachers.

The workmen in para-8 of the W.S. have stated that the concerned lady happens to be a 'workman' as per the definition of Section 2(M) of the Mines Act, 1952. On reference to the Mines Act Sec. 2(M) it will appear that Section 2(M) relates to the definition of "prescribed" which means prescribed by rules, regulations or bye laws as the case may be. Thus Section 2(M) of the Mines Act does not define 'workman'. However, "employed" is defined in Section 2(h). The person is said to be employed in a mine who works under appointment by or with the knowledge of the Manager, whether for wages or not, in any mining operation, or in cleaning or oiling of any part of any machinery used in or about the mine or in any other kind of work whatsoever incidental to, or connected with the mining operations. The concerned lady will not be covered under the definition of any mine in view of the said definition Section 2(j) of the Mines Act defines a Mine. It is needless to refer all the sub-clause which include 'mine'. It would suffice to conclude that the concerned lady was not employed in any mine as admittedly she is imparting needle craft and educating illiterate ladies at the creche centre which cannot be included under the definition of Mine.

In view of the discussions made above I hold that the concerned lady is not entitled to be regularised as Craft Teacher in Clerical Grade-II or in any other clerical Grade

at the women Welfare Centre/Baby Creche by the management of Loyabad Colliery.

In the result, I hold that the demand of RCMS for regularisation of services of the concerned lady Smt. Sumita Sen as Craft Teacher in Clerical Grade-II at the Women Welfare Centre/baby creche by the management of Loyabad colliery of M/s. BCCL is not justified and consequently the concerned lady is not entitled to any relief.

This is my Award.

I. N. SINHA, Presiding Officer
[No. L-20012/273/85-D. III(A)/D.IV(A)]

का. भा. 3460.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स भारत कोकिंग कोल लि. का मूनीडीह परियोजना के प्रबन्धतंत्र से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2) धनबाद के पंचाट को प्रकाशित करती है।

S.O. 3460.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Moonidih Project of M/s. Bharat Coking Coal Limited and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri I. N. Sinha, Presiding Officer.

Reference No. 111 of 1986

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947

PARTIES :

Employers in relation to the management of Moonidih Project of Messrs Bharat Coking Coal Limited and their workmen.

APPEARANCES :

On behalf of the workmen—Shri D. Mukherjee, Secretary Bihar Colliery Kamgar Union.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dhanbad, the 11th October, 1988

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L20012 (308)/85-D.III (A), dated, the 19th February, 1986.

SCHEDULE

"Whether the action of the management of Moonidih Project of Messrs Bharat Coking Coal Limited in dismissing their workman, Shri Khemilal Singh, Trammer, from service with effect from 3-5-1985 is justified? If not, to what relief is the concerned workman entitled?"

The case of the workman is that the concerned workman Shri Khemlal Singh was working as permanent Trammier in Moonidih Project of M/s. B.C.C.L. He was submitted with a chargesheet dated 1-2-85. The allegation against the concerned workman was that in the night shift between 25 and 26-1-1985 he was on duty at No. 1 Pit from 11 P.M. to 7 A.M. It is alleged by the management that he was caught red handed by the CISF Jawan at a distance of about 100 yards away from Pit No. 1 when he had cut about meters length of 4 core copper cable with the intention to steal worth about Rs. 1500 from Mine premises. He was therefore charged of mis conduct under clause 17(1)(a) of the certified Standing Orders. Clause 17(1)(a) of the Standing Orders deals with misconduct of theft, fraud or dishonesty in connection with the employers business of property. The concerned workman submitted his reply to the chargesheet denying the allegation. The case of the workman is that the management with an ulterior motive in order to victimise the concerned workman had initiated invalid and irregular departmental enquiry. The management had appointed an enquiry officer to conduct the domestic enquiry into the charges against the concerned workman and the said enquiry officer was biased and had acted at the instance of the management in holding the concerned workman guilty of the charge levelled against him. The allegation levelled against the concerned workman did not constitute misconduct under clause 17(1)(a) of the Certified Standing Orders. The domestic enquiry was perfunctory in nature and was an empty formality. The concerned workman was not afforded full opportunity to cross-examine the management's witnesses and to adduce defence witness. The charges levelled against the concerned workman was not established in the enquiry proceeding before the enquiry officer. The finding of the enquiry officer was perverse and not based on evidence adduced before the enquiry officer. The evidence before the enquiry officer regarding the alleged time of cutting 4 core copper cable at 2.40 A.M. on 26-1-85 differs from the time given in the chargesheet. The concerned workman was illegally and arbitrarily dismissed from service by an unauthorised person on the basis of perverse finding of the enquiry officer with effect from 3-1-85. The concerned workman represented before the management several times against his illegal and arbitrary dismissal and had requested for his reinstatement with full back wages but the management did not pay heed to his representation. Thereafter the union of the concerned workman raised an industrial dispute before the ALC (C), Dhanbad. The management appeared in the conciliation proceeding started by the ALC(C), Dhanbad. The conciliation ended in failure and on submission of failure report the present reference was made to this Tribunal for adjudication by the Government of India. On the above facts it is proved that the reference he answered in favour of the concerned workman with the direction to management to reinstate him with full back wages with effect from 3-5-85.

The case of the management is that the concerned workman was caught red handed on 26-1-85 at about 2.40 A.M. while he was stealing away an electric cable of about 5 meters length valued at Rs. 1500 belonging to the management from the mines premises. He was charged for committing misconduct of theft, fraud or dishonesty in connection with employers business or property and a chargesheet dated 1/2-2-85 was issued to the concerned workman through the Jail authority as the concerned workman was arrested by Police and he was in the custody of the Jail. The concerned workman submitted his reply to the chargesheet admitting that he was on duty during the night shift of 25-1-85 and was caught by the CISF Personnel at about 2.00 A.M. on 26-1-85 but he was falsely implicated and arrested on charge of criminal theft by the CISF personnel to which he pleaded his innocence.

The management appointed Shri D. B. Singh, Dy. P.M. as the enquiry officer to conduct the enquiry into the charge levelled against the concerned workman. Shri A. K. Dey, Personnel Officer was appointed as the Management's representative to present the case before the enquiry officer. The enquiry commenced on 4-4-85 and ended on 6-4-85. In the departmental enquiry the concerned workman was given full opportunity to cross-examine the management's witnesses and to give his own statement and to produce his witness in

defence. He was also allowed to take the assistance of a co-worker in the enquiry. The concerned workman had fully participated in the enquiry and had not raised any objection regarding the manner of conducting the enquiry or against the enquiry officer. The concerned workman was explained the contents of the documents exhibited and the depositions made by the witnesses so that the concerned workman may be able, to fully cross-examine the witnesses. The concerned workman put his signature throughout the enquiry proceeding. The enquiry officer submitted his report dated 8-4-85 to the Supdt. of Mines holding the concerned workman guilty of the misconduct charged against him. The Supdt. of Mines proposed of the penalty of dismissal to the concerned workman from service. The relevant papers along with the enquiry proceedings and the enquiry report were examined at various levels and the General Manager approved the dismissal of the concerned workman and thereafter the Project Officer issued an order of dismissal of the concerned workman by letter dated 3-5-85. Moonidih Projects under the charge of Project Officer who is Agent under the Mines Act, 1952. The Supdt. of Mines are the Agent in other collieries but at Ext. M-8 will show that Shri S. K. Bandopadhyaya was appointed as Agent by the General Manager. The General Manager is the Chief Mining Engineer under the Mines Act. The concerned workman had pointed out in his reply to the chargesheet that the incident took place at about 2.00 A.M. on 26-1-85 and thereafter the matters was verified by the management representative who submitted before the Enquiry Officer to correct the timing of occurrence in the chargesheet before the commencement of the enquiry and as such the concerned workman was not prejudiced due to such correction. On the above facts it is submitted that the dismissal of the concerned workman is legal bonafide and in accordance with the provision of Standing Orders applicable to the establishment and as such the concerned workman is not entitled to any relief.

A petition had been filed on 6-5-86 on behalf of the management that the concerned workman was dismissed from service for commission of serious misconduct duly established in the departmental enquiry conducted in accordance with the principles of natural justice and that the enquiry proceeding is being challenged by the workmen in their W.S. It was therefore prayed on behalf of the management that the fairness or otherwise of the departmental proceeding may first be decided as a preliminary issue so that in case it is held that the enquiry is not fair and proper the management may avail of the opportunity to lead evidence afresh before this Tribunal to establish the charge levelled against the concerned workman. As the fairness and propriety of the enquiry proceeding was being challenged by the workman the said issue was heard as a preliminary issue in which the management examined the enquiry officer and produced the enquiry proceeding along with all other relevant papers relating to the enquiry proceeding. By order dated 30-3-88 the Tribunal held that the domestic enquiry held into the charge against the concerned workman was fair proper and in accordance with the principles of natural justice and fixed the case for hearing on merit.

Now the points for adjudication are (1) whether the charge against the concerned workman was established by the management before the enquiry officer and (2) whether the punishment of dismissal of the concerned workman was justified.

The management has produced all the relevant papers relating to the enquiry proceeding and they are marked Ext. M-1 to M-9.

The facts of misconduct alleged against the concerned workman are mentioned in the chargesheet Ext. M-1 dated 1/2-2-85. The concerned workman has been charged for misconduct under clause 17(1)(a) of the Certified Standing Orders applicable to the workmen of Moonidih Project. The essence of the allegation against the concerned workman is that while he was in duty in the night shift of 25/26-1-85 he was caught red handed by CISF Jawan at a distance of about 100 yards away from Pit No. 1 when the concerned workman had cut about 5 meters length of 4 core copper cable with the intention to steal it. The concerned workman submitted his reply to the said chargesheet vide Ext.

M-2. It will appear from the reply of the concerned workman in Ext. M-2 that in the night he was on duty in the third shift of 25-1-85 and that about 2 A.M. he had gone to make water near tramming line when he was called by CISF Jawan Shri R. Prasad and was taken by him and was threatened. Under the threat of CISF Jawan he stated what the CISF Jawan told him to state and thereafter the concerned workman signed on the said statement. He has further stated that he had not committed theft of the copper wire and that he has been falsely implicated by the CISF Jawan Shri R. Prasad and was taken by him and was threatened. It will appear that he was caught by the CISF Jawan at about 2.00 A.M. near the tramming line.

It will appear from the enquiry proceeding Ext. M-5 that the management had examined 6 witnesses before the enquiry officer. MW-2 Gopal Prasad and MW-3 Shri Ravindra Prasad are the CISF Constables. Their evidence before the enquiry officer will show that they were on duty on 25-1-85 from 9.00 P.M. to 5 A.M. of 26-1-85 in C shift of Moonidih workshop. They have stated that while they were on duty they heard some sound at about 2.40 A.M. and they proceeded ahead and found a person cutting the electric cable. They have stated that on seeing the CISF Jawan the person cutting the cable wanted to run away and then the two CISF witnesses chased and caught hold of the concerned workman and took him near the place where the cable had been cut. They have stated that the concerned workman disclosed his name as Khemlal a workman of the plant. They have stated that the concerned workman was sent to the Cash guard at a distance of about 30 yards and after sometime the shift In-charge Shri Ajoy Kumar arrived there. The Inspector and the Officer of the Project also arrived there. Thus these two witnesses were the eye witness who had actually seen the concerned workman cutting the copper cable and while the concerned workman was trying to run away the CISF witnesses MW-2 and MW-3 chased the concerned workman and caught hold of him. There is absolutely nothing in the cross-examination of these two witnesses to show as to why the two CISF Jawans would falsely implicate the concerned workman in the theft of cable of the Project. There is also no doubt about the fact that it was the concerned workman who had cut the cable and on seeing the two CISF Jawan coming near him tried to run away but was caught after chase. The evidence of these two witnesses is such that no room for doubt is left regarding the fact that the concerned workman had cut the cable and was caught red handed while he was trying to run away after being seen by the CISF Jawan. The fact that the concerned workman was caught at about 2.00 A.M. by the CISF Jawan is admitted by the concerned workman in Ext. M-2 which is the reply of the concerned workman to the chargesheet.

The CISF Jawan stated that they had informed the ASI Incharge Shri Ajoy Kumar and thereafter Ajoy Kumar had arrived. The said Ajoy Kumar had been examined as MW-5 before the enquiry officer. Shri Ajoy Kumar has stated that he was the shift incharge on 25-1-85 from 9.00 PM to 5.00 A.M. He has stated that at about 2.45 A.M. on 26-1-85 he received a message on phone that a thief had been caught and has been brought before Cash guard. MW-5 has stated that soon after he informed the incident to the Inspector Incharge Shri Sharma and on his instruction he went near the cash guard along with the two staff of BCCL. He has stated that Shri Sharma also came at that place after sometime. MW-5 has stated that he took the statement of the concerned workman in presence of the 2 BCCL witnesses. When he arrived at the cash guard he had seen the concerned workman under the custody of the CISF Jawan Ravindra Prasad. MW-5 visited the place of occurrence along with the concerned workman and CISF Jawans and Ravindra Prasad and on enquiry the concerned workman told MW-5 that the intended to take away the cable at the residence. MW-5 had also found some piece of cable which had been cut at the place of occurrence. MW-5 prepared a seizure list in presence of two witnesses which forms part of the enquiry proceeding. MW-5 Shri R. P. Chandra is the Asstt. Colliery Manager who was on duty in night shift from 11.00 P.M. of 25-1-85 to 7.00 A.M. on 26-1-85 in the control room. He has stated that at about 3.00 A.M. a CISF Jawan told him that the Inspector of CISF had called him that a thief had been caught. He has stated that he along with shift Foreman Incharge Shri B. R. Manjhi went to the cash guard office where he found Inspector Shri Sharma and ASI Sh. Ajoy Kumar along with the CISF guards and the concerned work-

man. When he had reached he found that the concerned workman was given his statement before the Inspector Shri Sharma. He has stated that the concerned workman signed the said statement then the statement recorded was read over MW-4 also signed on the said statement. He also went along with the Inspector Sharma and Ajoy Kumar where cable was lying. He found that some portion of the cable had been cut. He had also seen the hathori and chheni which was seized and in respect of which a seizure list was prepared. He has stated that the concerned workman signed the said cross-examination of MW-4 to show that any part of his evidence was false. MW-6 is the statement of Shri Sharma, Inspector CISF. He has stated that at about 2.45 A.M. of 26-1-85 night shift incharge, ASI Ajoy Kumar informed him on phone at his residence that an employee of Moonidih Project was caught by the CISF Jawan while cutting cable and the concerned workman was brought in the office of the cash guard. He directed the ASI to call some witness and thereafter he also went to the cash guard room. He has stated that he recorded the statement of the concerned workman in presence of Shri R. P. Chandra, ACM and B. R. Manjhi Foreman Incharge. The concerned workman accepted that he had cut the cable and on being asked the concerned workman took MW-6 to the place where the cut cable was kept. He has stated that at the place of occurrence he found 4 coir cable about 5 meters in length lying there and a portion of it was cut from the side and the copper wire was visible from it. The evidence of MW-6 fully corroborates the evidence of other witnesses and there appears to be no reason to disbelieve him. Shri B. R. Manjhi gave his statement before the enquiry officer. He had received a message on phone at about 3 P.M. from CISF guard cash guard when he was in the control room. He had received a message that an employee has been caught in theft. He further stated that one CISF Jawan came and told that Inspector Shri Sharma of CISF has called him in the cash guard room and thereafter he along with Shri Chandra went there. He has stated that Shri Sharma recorded the statement of the concerned workman in their presence and that he along with Shri Sharma signed the said statement. He has stated that Inspector Sharma had not threatened or coerced the concerned workman to give his statement. According to him the concerned workman had given his statement out of his free will. In cross-examination he has stated that he had seen Chheni and Hathori at the place where the cable was laying.

The evidence of the above management's witnesses show that the concerned workman was caught while committing theft of the copper cable in the alleged night of occurrence and that the concerned workman was caught by the CISF Jawan while he was trying run away from the place of the theft of cable.

The concerned workman examined his co-worker Shri S. P. Singh as Witness No. 1 in his defence. Admittedly Shri S. P. Singh was not present at the time of alleged occurrence. He had come to know about the fact from the concerned workman that the CISF Personnel had made a complaint to involve the concerned workman in case of theft in order to get reward for the same. Shri S. P. Singh had stated that the concerned workman had been dragged and beaten by the CISF constables from the duty place. The concerned workman also stated in his statement before the Enquiry Officer that he had been dragged forcibly by the CISF from his duty place and assaulted. On reference to his reply to the chargesheet it will appear that the concerned workman was called by Shri R. Prasad CISF Jawan and as taken. There is no mention in Ext. M-2 that CISF Jawan had dragged him and had assaulted him. The concerned workman in his cross-examination stated that he was neither dragged from his duty place nor was forcibly taken away by the CISF Jawan and that he had stated the true fact in his explanation to the chargesheet. It will thus appear that Shri S. P. Singh and the concerned workman were falsely making allegation against the CISF Jawan that the concerned workman was forcibly dragged from his place of duty and was assaulted. All these have been brought into evidence in order to show the high handedness of the CISF Jawans in order to cover the truth of the fact that the concerned workman was caught by the CISF Jawan when seen cutting the copper cable after a chase. I do not find any material on the record to show that the allegation against the concerned workman

was false. The management has examined witnesses whose evidence cannot be disbelieved.

In view of the evidence discussed above I hold that the charge of theft and dishonesty in connection with the employers property has been established against the concerned workman under clause 17(1)(c) of the Standing Orders. I am in agreement with the finding arrived at by the Enquiry Officer in his enquiry report Ext. M-6. Accordingly I hold that the charge of theft against the concerned workman was established in the enquiry proceeding and there is no reason to believe it.

Point No. 2

It has been submitted on behalf of the workmen that the concerned workman was dismissed by an unauthorised person against the provision of the Standing Order. It will appear from the notesheet in Ext. M-6 that the Supdt. of Mines Moonidih Project submitted his note to the Project Officer Moonidih Project and the General Manager, Moonidih area proposing punishment of dismissal of the concerned workman. The General Manager in his note in Ext. M-6 has approved the dismissal of the concerned workman and directed the Project Officer to issue dismissal order, Ext. M-7 if the office order dated 3-5-85 under the signature of the Project Officer Moonidih Project dismissing the concerned workman from service with effect from 4-5-85. In this office order also it is mentioned that the order was being issued with the approval of the competent authority. It will appear from the evidence of MW-1 that while he was examined at the time of the preliminary issue that the General Manager Shri M. L. Duggar had appointed Shri S. K. Bandopadhyaya as Agent of the Mines. The dismissal order Ext. M-7 is signed by Shri S. K. Bandopadhyaya who has been appointed as Agent of Moonidih Project. Thus it is clear that the Shri Bandopadhyaya being the Agent had the authority under the Mines Act to dismiss the concerned workman from service. Clause 17(ii) of the Standing Orders, an extract of which has been marked as Ext. M-9 will show that the approval of the Owner, Agent or other competent authority above Manager is specified by the Managing Director for the purpose from time to time shall be obtained before imposing the punishment of dismissal. The notesheet Ext. M-6 will show that the General Manager who is above Manager have approval the dismissal of the concerned workman. On the consideration of the above facts it will appear that the dismissal of the concerned workman has been approved by the authority who is competent to order the dismissal of the concerned workman. In this view of the matter I do not think that the concerned workman has not been dismissed by a competent authority.

As held above the concerned workman was seen cutting the cable in the premises of the mines and when on seeing the CISF Jawan he tried to run away, he was chased and caught by the CISF Jawans. It has been established that the cable belonged to the management and there is no assertion on the part of the workmen that the said cable belonged to the concerned workmen. There is no evidence on the record to explanation that the concerned workman had not committed the theft of the cable. The fact that the concerned workman was seen cutting the cable itself establishes that the concerned workman had already committed theft of the cable and that there is no doubt that he had cut the cable for the purpose of stealing it away. It was not only the intention of the concerned workman to steal the copper cable of the management but he had actually committed theft and had happened the upper layer of the cable so that the may take the copper portion. It is clear case of theft of the management's property and such offences of commissioning of theft by a workman cannot be taken lightly. The theft of the copper cable by the concerned workman is a serious offence and I do not think that it would be just to let him off with some minor punishment in such a case of theft of management's property of serious nature. Accordingly, I hold that the punishment of dismissal of the concerned workman appears to be quite justified.

In the result, I hold that the action of the management of Moonidih Project of M/s. B.C.C.L. in dismissing the concerned workman Shri Khemlal Singh, Trammer from service with effect from 3-5-85 is justified and consequently the concerned workman is entitled to no relief.

This is my Award.

I. N. SINHA, Presiding Officer

[No. L-20012/308/85-D.III (A)/D.IV (A)]

2830 GI/88-6.

का. आ. 3461.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स भारत कोकिंग कोल लि. का कुसुन्डा कॉलियरी के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, स. 1, धनबाद के पचाट को प्रकाशित करती है।

S.O. 3461.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Kusunda Colliery of M/s. Bharat Coking Coal Limited, and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(4) of the Industrial Disputes Act, 1947

Reference No. 35 of 1988

PARTIES:

Employers in relation to the management of Kusunda Colliery (Area No. VI) of M/S. B.C.C.L.

AND

Their Workmen

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES:

For the Employers : B. Joshi, Advocate.

For the Workmen : B. K. Ghose, Member, Executive Committee, Janta Mazdoor Sangh.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 23rd September, 1988

AWARD

By Order No. L-20012(398)/81-D.III(A), dated, the 24th March, 1982, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred this dispute to this Tribunal for adjudication with following schedule :

"Whether the demand of the workmen of Kusunda Colliery of Messrs Bharat Coking Coal Limited, P.O. Kusunda, Dist. Dhanbad, that the workmen listed in Annexure below should be taken in employment as Badli Loaders, according to the Bharat Coking Coal Limited's circular dated the 4th August, 1980, is justified? If so, to what relief are the workmen concerned entitled?"

ANNEXURE

1. Shri Rambilash Monia Chauhan
2. Shri Chandeshwar Nonia
3. Sri Ra'esh Chauhan Nonia
4. Shri Suresh Chauhan Nonia
5. Shri Lalchand Chouhan Nonia
6. Shri Ramjatan
7. Shri Rajendra Nonia
8. Shri Maheshar Nonia Chouhan
9. Shri Lachhman Nonia
10. Sri Sitaram Nonia
11. Smt. Radhwa Kamin

12. Smt. Sundari Kamin
13. Smt. Subhagia Kamin
14. Smt. Nunwa Kamin
15. Smt. Asha Kamin
16. Smt. Lachhminia

2. The case of the concerned workmen, as appearing from the written statement-cum-rejoinder submitted by the Joint General Secretary of the sponsoring union, Janta Mazdoor Sangh, details apart, is as follows :

The concerned workmen were employed as wagon loader in Kusunda Colliery of M/s. B.C.C. Ltd. They had worked for the colliery between 1971 and 1974 mainly as wagon loaders and on some occasions as Truck-loaders, basket coal suppliers, ash cleaners, hard coke stacker and in other similar capacities. They had been paid wages, bonus and other awarded benefits for the work done by them. Their attendances were marked in the statutory Attendance Register and entries were made in the colliery registers in respect of wages and bonus drawn by them. In accordance with the notification contained in the circular of M/s. B.C.C.L. bearing No. BCCL/IR/22914/80/51417-667 dated 4-8-80 issued by the General Manager (Personnel) Karmik Bhawan, Dhanbad the concerned workmen were eligible to be enrolled on permanent roll or as Badli Loaders according to the merit of each case, but the management had failed to act fairly and reasonably and most arbitrarily robbed their earned benefits. Sri N. K. Chauhan, Branch Secretary, Janta Mazdoor Sangh, Kusunda Area Office, pressed the local management to employ the concerned workman as permanent/badli workmen but the local management showed an adamant attitude and did not concede to the demand. In the circumstances, the sponsoring union has prayed that the present reference be answered in favour of the workmen.

3. The case of the management of Kusunda Colliery of M/s. B.C.C. Ltd., as appearing from the written statement, is as follows :

Consequent upon nationalisation of all coal mines effective from 1-5-1973 schemes for re-organisation were introduced. Several small coal mines belonged to different collieries were amalgamated and formed bigger units; concentration of operations and centralised controls were introduced. The workmen were also put in one establishment and registers of permanent and casual workers were prepared. The colliery managements were permitted to engage any person outside the permanent and casual workers of the colliery as and when required. Such workmen whose names did not appear in the registers of permanent and casual were called "De-Listed Casual Workers". The management had no obligation to give them job. They were engaged on daily basis and there was no continuity of service. The management introduced a circular for regularisation of casual workers on the basis of 240 days of attendance put in a calendar year in respect of surface workers and 190 days of attendance in respect of underground workers. The management also issued a circular dated 4-8-1980 fixing the criteria for enrolment of de-listed casuals as badli workers. The concerned workmen have been claiming for enrolment as badli workers since they claimed to have worked for more than 75 days as casual workers. But they have failed to produce any document in support of their claim. It was detected that the union in collusion with some of its members working in the colliery manipulated some registers by overwriting, erasing and re-writing or otherwise fabricating colliery records in a bid to show the concerned workmen as de-listed casuals. The concerned workmen have been trying to get service through surreptitious methods. In the circumstances, the management has prayed that the demand of the concerned workmen be dismissed.

4. In rejoinder to the written statement of the management, the sponsoring union has emphatically denied to have made any collusion with any of its members working in the colliery in manipulation of records, overwriting, erasing, re-writing or fabrication.

5. In rejoinder to the written statement of the sponsoring union, the management has asserted that whosoever worked in the colliery on any kind of job, his attendances are marked in the Attendance Register and he is paid wages, bonus etc. The names of the concerned workmen did not appear in any register because they did not work for the colliery.

6. The parties arrayed have not adduced any oral evidence in support of their respective claims. The management has filed a series of registers called Bonus Registers for the year 1973-76 (Exts. M-1 to M-20) and its circular dated 4-8-80 (Ext. M-21). Both the parties have relied on these documents in support of their respective claims.

7. At the out-set, I would like to state that by petition dated 3-8-84 the sponsoring union abandoned the claim of four workmen, mentioned in Annexure to the schedule of the order of reference, namely, Chandeshwar Nonia (Sl. No. 2), Lachhman Nonio (Sl. No. 9), Sundari Kamin (Sl. No. 12) and Munwa Kamin (Sl. No. 14). Thus, out of the 16 concerned workmen the dispute now remains with respect to 12 other workmen as listed in the Annexure.

8. The terms of reference spells out if the demand of the workmen of Khusunda colliery of M/S. B.C.C. Ltd. for employment of the concerned workmen as 'Badli' Loaders is justified or not. It appears also from the written statement submitted by the sponsoring union on behalf of the concerned workmen that the concerned workmen were eligible to be enrolled on permanent roll or as 'badli loaders' of the colliery according to the merit of each case. The Bonus Registers produced by the management (Exts. M-1 to M-20) are not indicative of the fact that any of the concerned workmen had worked for more than 240 days on the surface or 190 days in underground in a calendar year. That being so, none of the concerned workmen are entitled to claim to be on permanent roll of the colliery.

9. Even so, the further claim of the sponsoring union is that the concerned workmen should be employed as 'badli workers' of the colliery. Rule 3(d) of Model Standing Orders for Industrial Establishments in Coal Mines envisages that a 'badli' or substitute is one who is appointed in the post of a permanent workman or a probationer who is temporarily absent; but he would cease to be a 'badli' on completion of a continuous period of service of one year (190 attendances in the case of below ground workman and 240 attendances in the case of any other workman) in the same post or other post or posts in the same category or earlier if the post is vacated by the permanent workman or probationer. A 'badli' working in place of a probationer would be deemed to be permanent after completion of the probationary period. The union has foot its claim on the basis of a circular issued by the management on 4-8-80. This circular Ext. M-21 was issued in the context of absenteeism of workmen in general and particularly in Category of Miner/Loader. It appears that in order to keep up momentum of production the management decided to take in employment as 'badli loaders' such of the de-listed casual wagon loaders who have put in 75 days or more attendance during the period 1973-76. The circular also envisages maintenance of a register called 'badli register' in which the particulars of the workmen, such as, name, father's name, age, date of birth, home address, duration of employment and the period of authorised leave of a workman in whose place the badli workman is deputed and the name of the person in whose place he is appointed are to be noted.

10. The Bonus Registers firmly establish the position that all the 12 concerned workers had worked for more than 75 days during the years 1973-76 (Exts. M-1 to M-20). But the management has alleged a lot of manipulations, cutting, overwriting in Bonus Registers with respect to the name and surname of the concerned workers, their father's name and home address etc. As a matter of fact the management has pointed out these aspect of the matter specially in writing. It has been allotted or the management that these are all manipulations done by the union in collusion with some of its members working in the colliery.

This allegation has been totally denied by the sponsoring union. That being so it is for the management to prove that this alleged manipulations were done by the sponsoring union in collusion with some of its members working in the colliery. But the management has not examined any witness to vouch for the fact that these are manipulations and that too were done in collusion with some of the members of the sponsoring union working in the colliery. It must not be forgotten that the Bonus Registers are maintained in the colliery office and in order to prove the alleged manipulations the management has bonded duty to prove that these alleged manipulations were products of collusion of some of the members of the sponsoring union working in the colliery. No evidence has been surfaced on record to prove that any of the members of the sponsoring union had any access to these registers. That apart the allegations made by the management cannot but cast a reflection upon the dismal state of its administration. Anyway the sponsoring union has refuted all the allegations of the management by providing cogent and persuasive comments by way of explanation to the overwriting and cuttings. Considering all these facts and circumstances I come to the conclusion that the bonus registers are genuine documents and that the sponsoring union has got no hand in allegedly manipulating the same.

11. Considering the fact that the concerned workers worked for more than 75 days during the period 1973-76 I have no hesitation to hold that they are 'de-listed' casual wagon loaders who are entitled to be employed as 'badli workers' in terms of circular of the management dated 4-8-80.

12. Sri B. Joshi Advocate for the management has contended that the identity of the concerned workers will remain as a thorny problem unless some positive directions are given in this respect. The sponsoring union in confirmation to the order of the Tribunal dated 10-4-80, has filed a complete list of remaining 12 concerned workers with their fathers' name or husbands' name and their addresses along with two attested copies of Pass-port size photographs. This has rendered identification of the concerned workers comparatively easier. Even then, each of the concerned workers shall submit a certificate from the Mukhiya with respect to his identity which shall be again attested to by Sri B. K. Ghose, Member, Executive Committee, Janta Mazdoor Sangh.

13. Accordingly, the following award is rendered— the demand of workmen of Kusunda Colliery of M/s B.C.C. Ltd. for employment of the concerned workers as listed in the Annexure and serialised in 1, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15 and 16 as 'Badli Loaders' in terms of the circular of M/s B.C.C. Ltd. dated 4-8-80 is justified. The management is hereby directed to enlist them as 'Badli Loaders' immediately and employ them according to the extent rules.

In the circumstances of the case, there will be no order as to cost.

S. K. MITRA, Presiding Officer
[No. L-20012/398/81/D.II(A)/D.IV(A)]

का.आ. 3462.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स भारत कोकिंग कोल लि. का केशरगढ़ कोलियरी के प्रबन्धतंत्र से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 2, धनवाद के पंचाट को प्रकाशित करती है।

S.O. 3462.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure

in the industrial dispute between the employers in relation to the Kessargarhi Colliery of M/s. Bharat Coking Coal Limited.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri I. N. Sinha, Presiding Officer.

Reference No. 29 of 1983

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

PARTIES :

Employers in relation to the management of Kessrugarhi Colliery of Messrs. Bharat Coking Coal Limited and their workmen.

APPEARANCES :

On behalf of the workmen—Shri D. Mukherjee, Secretary, B.C.K.U.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the 30th September, 1988

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(305)/82-D.III(A) dated, the 2nd April, 1983.

SCHEDULE

"Whether the demand of Secretary, Bharat Colliery Kamgar Union (CITU), Dhanbad for regularisation of the workmen listed in the Annexure below, as Slack Suppliers from 1978 with protection of their wage rates by the management of Kessrugarhi Colliery, Area No. I of Messrs Bharat Coking Coal Limited, is justified and, if so, to what relief are these workmen entitled?"

ANNEXURE

1. Mitan Mondal.
2. Biru Dhobi.
3. Nakru Kumhar.
4. Sukdeo Kumhar.
5. Jagdish Rajwar.
6. Kalicharan Mahato.
7. Siocharan Mahato.
8. Karma Mahato.
9. Janki Rai.
10. Suchan Rai.
11. Sukkar Rai.
12. Gurucharan Mahato.
13. Giridhari Mahato.
14. Banwari Mahato.
15. No. 1 Budhan Mahato.
16. Abdul Mian.
17. Ritmohan Chamar.
18. Chutan Chamar.
19. No. 3 Chuttu Chamar.
20. Pacha Chamar.
21. Nemchand Chamar.
22. Munua Chamar.
23. Makuwa Chamar.
24. Lochan Dhobi.
25. Mohan Beldar.
26. America Nonia.
27. Bhado Nonia.

28. Beni Nonia.
29. Punit Sao.
30. Hari Mahato.
31. Ramphal Sao.
32. Ramlal Nonia.
33. Chuttu Manjhi.
34. Munwa Kamin.
35. Jageshwari Kamin.
36. Balkeshwar Nonia.
37. Rumali Sao.
38. Mathura Razak.
39. Rajkumari Kamin.
40. Nenia Kamin.
41. Sobagi Kamin.
42. Santi Kamin.
43. Subla Kamin.
44. Bara Mungri Kamin.
45. Kunti Dhhbin.
46. Rabomi Kamin.
47. Chhotta Mangri Kamin.
48. Indua Kamin.
49. Bhutan Mahara.
50. Chaman Mahato.
50. Subas Kamin.
52. Balua Kamin.
53. Sonmani Kamin.
54. Bhola Dhobi.

The case of the workmen is that the concerned 54 workmen who were working as Bhatta Slack supplier since 1978 in Kessurgarh Colliery of M/s. B.C.C.L. Originally they were appointed as permanent Miner/loader. They were getting Group VA wages prior to their transfer as Bhatta slack supplier in 1978. From the year 1978 the management started paying them Group-III wages instead of Group VA wages illegally and arbitrarily without giving any notice under Section 9A of the I. D. Act. The concerned workmen protested against the arbitrary payment of wages and for not regularising them but the management did not pay heed to their request. Thereafter the workmen approached their union and raised the industrial dispute. On failure of the conciliation the present reference was made to this Tribunal for adjudication.

The management filed their W.S. and submitted that the reference is not legally maintainable. The concerned workmen are working as slack suppliers and are placed in Group-III as per the Recommendation of the Coal Wage Board read with NCWA-I and II. They are permanent workmen and as such the question of regularisation as slack suppliers does not arise. They are paid the correct wages as per the work performed by them. They are paid on piece rate basis according to the prescribed rate of the work done by them. There is no time scale for them and no annual increment is due to him. Most of the concerned workmen were previously working as wagon loaders or slack suppliers and were being paid on piece rate basis and were getting Group III wages prior to their regularisation. After regularisation they were to be in Group III and they were paid the wages as prescribed for slack suppliers in Gr. III. Some of the concerned workmen were working as Miners and were getting Group VA wages. Some of the concerned workmen who were originally miners voluntarily opted for surface job as slack supplier accepting the rate of wages fixed for such work. It is not possible for the management to calculate the wages at the same rate meant for miner/loaders and pay them for the work of slack suppliers. It is proved that the concerned workmen are not entitled to any relief.

The case was pending since 1983 and the workmen did not produce the witness in support of the case. Sometimes their representative Shri D. Mukherjee did appear and requested for adjournment but in spite of the fact that the case has lingered for a period of about 5 years, the workmen did not produce any witness nor any document in sup-

port of their case. Shri D. Mukherjee who was representing the workmen submitted before me that he has no instructions and is not in a position to proceed in the case.

It was for the workmen to establish the demand in accordance with the schedule of the order of reference. As the demand of the concerned workmen has not been established it has to be held that the demand of the union for regularisation of the workmen as slack suppliers from 1978 with protection of their wage rate by the management of Kessurgarh Colliery of M/s. B.C.C.L. is not justified and that the concerned workmen are not entitled to any relief.

The Award is passed accordingly.

I. N. SINHA, Presiding Officer
[No. L-20012/305/82-D. III(A) D-IV(A)]

नई दिल्ली, 7 नवम्बर, 1988

का. आ. 3463.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मंसज भारत कोकिंग कोल लि. का भुली टाउनशिप के प्रबन्धतंत्र से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अतुल्य में विनिर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2), धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-10-88 को प्राप्त हुआ था।

New Delhi, the 7th November 1988

S.O. 3463.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2 Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Bhuli Township of M/s Bharat Coking Coal Limited and their workmen, which was received by the Central Government on the 21-10-1988.

(No. L-20012(143) 86-D.IIIA/IV.A)

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD.

Reference No. 293 of 1986

In the matter of an industrial dispute under Section
19(1)(d) of the I.D. Act, 1947.

PARTIES :

Employers in relation to the management of
Bhuli Township of M/s. Bharat Coking
Coal Limited and their workmen.

APPEARANCES :

On behalf of the workmen : Shri J.P. Singh,
Advocate.

On behalf of the employers : Shri R. S. Muthy,
Advocate.

State : Bihar.

Industry : Coal

Dated, Dhanbad, the 12th October, 1988.

AWARD

The Government of India, Ministry of Labour in exercise of the power conferred on them under section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(143)/86-D. III(A), dated the 15th August, 1986.

THE SCHEDULE

"Whether the action of the management of M/s. Bharat Coking Coal Limited Headquarters at Koyla Bhavan, Koyla Nagar (Dhanbad) in not redesignating their workman, Shri Sarju Singh as Filter Operator in Category-III from 1-1-1979 is justified? If not, to what relief is the said workman entitled?"

The case of the workmen is that the concerned workman Shri Sarju Singh is a permanent employee of BCCL. He was working as a Filter Operator in the Water Supply Division at Bhuli Township under the control of Civil Engineering department of Water Supply Division of Koyalnagar, Headquarters with effect from 4-9-77. His original designation of Line Mazdoor was changed as Pump Operator in Cat. II vide office order dated 16/31.12.80. Cat. II of the Pump Operator is the same Cat. as that of Line Mazdoor in which the concerned workman was previously employed. The concerned workman was improperly designated as Pump Operator Cat. II although he was doing the job of Filter Operator which is a job of Cat. III. The concerned workman is entitled to be placed in Cat. III as Filter Operator as in the case of Awadh Kumar Pandey, Shri Madan Singh and Shri Jitendra Singh. The concerned workman represented his case on 8-5-81 through his superior officer for designating him as Filter Operator and placing him in Cat. III. In spite of favourable notings from the departmental officers under whom the concerned workman had worked as a Filter Operator, his case was not finalised by the management in his favour. The contention of the management that the concerned workman did not work as Filter Operator from 1st January, 1979 is incorrect. On the above facts it is submitted that the action of the management of M/s. B.C.C.L. Headquarters in not re-designating the concerned workman as Filter Operator in Cat. III is not justified. It is prayed therefore that an Award be passed in favour of the concerned workman designating him as Filter Operator and placing him in Cat. III with effect from 1-1-1979.

The case of the management is that the reference is not maintainable and that it is bad in law since the purported dispute is over stale. The concerned workman was initially in Cat. I Mazdoor employed in the Water Supply department at Bhuli Township. He along with others were given opportunity of learning the job relating to operation of Pumps. After sometimes the cases of all the workers concerned who were similarly given training on different jobs in the Water Supply department at various places were considered by a departmental promotion committee towards the end of 1980 and an office order dated 16/31-12-80 was issued placing the different workers in the proper categories. After the said order the concerned workman kept quiet indicating that he had no griev-

ance regarding his designation and category. The concerned workman did not work as Filter Operator from 1-1-79 or at any other time and had worked only as a Pump Operator. The management was justified in not re-designating him as Filter Operator in Cat. III. The concerned workman was all along discharging the duties of Pump Operator and he was properly placed in the post of Pump Operator in Cat. II. It is further stated that there is no comparison between the concerned workman and the job of the other 3 workers Awadh Kumar Pandey and two others as they were actually working as Filter Operators. The concerned workman has tried to fabricate certain documents with ulterior motive and no reliance should be placed on this document. On the above facts it is submitted on behalf of the management that the concerned workman is not entitled to re-designated as Filter Operator in Cat. III and the action of the management in not re-designating him as Filter Operator in Cat. III from 1-1-79 is justified and the concerned workman is not entitled to any relief.

The point to be considered in this case is whether the concerned workman was working as Filter Operator and as such entitled to be placed in Cat. III from 1-1-1979.

The management examined two witnesses and the workmen examined one witnesses in support of their respective case. The documents of the workmen have been marked as Exts. W-1 to W-8 and the documents of the management are marked Ext. M-1.

The main dispute in this case is whether the concerned workman was working as Pump Operator or a Filter Operator. It is admitted that Pump Operator is initially placed in Cat. II and that a Filter Operator is placed in Cat. III. WW-1 is the concerned workman Sarju Singh. He has stated that on 9-4-77 he was appointed as Filter Operator in the Water Division of Lodna Colliery and on 5-9-77 he was transferred to Bhuli where there was a Filter plant since before his joining there. He has stated that the said Filter plant at Bhuli works in 3 shifts and that 2 Filter Operators including the concerned workman were working in one shift of the Filter Plant at Bhuli. He has stated that there were 7 Filter Operators in all in Filter plant at Bhuli. He has further stated that although he was designated as General Mazdoor but he was being taken the work of Filter Operator but in 1980 he was designated as Pump Operator in Cat. II. He has stated that the management should have placed him in Cat. III as Filter Operator. He has stated that he had made representations to the management for Cat. III and Overseer and the Superintending Engineer had given their note on his representation. He has stated that the persons working along with him have all been designated as Filter Operator except him. The management examined MW-1 Shri Banarasi Singh Area Civil Engineer and MW-2 Shri Rameshwar Ram St. Overseer who have stated that the concerned workman was working as Pump Operator and not as a Filter Operator. MW-1 Banarsi Singh has been confronted with the certificate Ext. W-1 dated 22/23-5-85 granted by him to the concerned workman. MW-1 has accepted that he had given the certificate Ext. W-1 to the concerned workman. He

has tried to explain that he was transferred to Kusunda Area in June, 1985 and then the concerned workman had approached him for a certificate for getting a job elsewhere and he had granted the said certificate Ext. W-1. He has stated that the facts stated by him in the certificate Ext. W-1 that the concerned workman was serving as a Filter Operator since 1977 is not correct. MW-1 has admitted that the note marked Ext. W-2 is under the signature of Shri M. S. Ahluwalia, then Executive Engineer in Koyalnagar who had also looked after the work of Bhuli for sometime. MW-1 had also proved the note Ext. W-2/1 of Shri D. K. Choudhury, Executive Engineer. Thus the certificate granted by MW-1 shows that the concerned workman was serving as Filter Operator since 1977 and was competent skilled workman operating the Filter plant as well as shofting plant. The explanation regarding incorrect statement in Ext. W-1 given by MW-1 cannot be believed as it is not expected of an officer of his stature to state false facts while granting certificates to any workman even if a workman represents that he requires certificate to that effect for any other purpose. The conduct of MW-1 cannot be appreciated by any Court of law. The fact that the statement made in the certificate Ext. W-1 was correct is also established by other documents which I will discuss hereinafter. Ext. W-2 which is admitted note of Shri M.S. Ahluwalia, Executive Engineer shows that the concerned workman Sarju Singh along with other had made representations for designating them as Filter Operator/Shoftener operator. He has stated that the concerned workman had worked as Filter Operator from 14-4-77 to 4-9-77 and that thereafter the concerned workman was transferred from Lodna to Bhuli Water Supply where he has worked as Filter Operator off and on. This note of Shri Ahluwalia is dated 1-6-1981. The note Ext. W-2/1 of Shri D. K. Choudhury, Executive Engineer will show that Sarju Singh is working in Filter Plant at Bhuli from 5-9-77 and he recommended for changing his designation and category from Pump Operator Cat. II to Filter Operator Cat. III. The final result of this noting does not appear to be available.

MW-2 Shri Rameshwar Rani, Sr. Overseer had worked in Bhuli Water Supply Scheme from 1976 to 1981. He has stated that formerly the concerned workman was working as casual labour and in 81 the concerned workman was made Pump Operator. He has stated that the concerned workman had filed a petition Ext. W-6 on which there is his endorsement with signature on it. The said note of MW-2 shows that the concerned workman had worked as Filter Operator from '77 to '81 and Bhuli Water Supply Scheme MW-2 has also tried to explain his said note on Ext. W-6 by stating that he had noted the said endorsement on Ex. W-6 in order to help the concerned workman and that the said endorsement is not correct. He has also denied that the concerned workman had ever worked as Filter Operator during his period. The evidence of MW-2 itself establishes as evidence of a liar in view of this note in Ext. W-6 which was written at the relevant time. It was easy for MW-1 and MW-2 to depose which now suited the management but the facts deposed before this Tribunal has been falsified by their own certificate and noting of the relevant time. MW-2 stated in his cross-examination that an Attendance Register was maintained in respect of all the persons including the concerned

workman. No person has been assigned as to why those attendance registers have not been produced by the management which was being maintained by them. The attendance registers could have shown the designation to which the concerned workman or the other workmen were working Ext. W-7 is the photocopy of family identity card granted to the concerned workman in which the designation of the concerned workman has been shown as Pump Filter Operator. If the concerned workman was not working as Filter Operator in a grade higher than the Pump Operator, there was no reason to show his designation as Filter Operator. It appears that although the concerned workman was designated as Pump Operator but as he was working as Filter Operator the said designation "Pump Filter Operator was written in the family identity card Ext. W-7. Ext. M-1 is admittedly the office order with the annexure by which the concerned workman was categorised as Pump Operator Cat. II from 1-1-80. The case of the workmen is that the concerned workman was wrongly designated as Pump Operator Cat. II in Ext. M-1 and that as he was working as Filter Operator he should have been designated as Filter Operator in Cat. III. The fact that the concerned workman was working as Filter Operator is further strengthened by the note on Ext. W-4. It appears from Ext. W-4 that the concerned workman and one Shri Ramanuj Singh had filed a petition before the Superintending Engineer Shri D. P. Singh, BCCL Koyalnagar for issuance of experience certificate of Filter Operator as experience certificate was required in order to correct designation of Pump Operator. The note shows that the concerned workman was working as Filter Operator/Shoftener Operator. The note of the Superintending Engineer, Shri D. P. Singh on it shows in his forwarding note to Shri M. P. Sharma, SE(C) Township Koyalnagar that there is truth in the prayer made by the concerned workman and the same may be admitted and necessary order passed. Thus the documents produced by the workmen are overwhelming to show that the management's own officers had in the past found the concerned workman working as a Filter Operator and that they had recommended his case for designating him as Filter Operator in Cat. III. The witnesses examined by the management in respect of whom I have made my comments above do not appear to be reliable specially in view of the different notings and certificates of the concerned authorities. Accordingly I hold that the concerned workman is working as a Filter Operator in Cat. III. Since before 1-1-1979 and as such it appears that the demand of the workmen that the concerned workman should be designated as Filter Operator in Cat. III from 1-1-79 appears to be justified.

In the result, I hold that the action of the management of M's. BCCL Headquarters at Koyala Bhavan, Koyalnagar (Dhanbad) in not re-designating the concerned workman Shri Sarju Singh as Filter Operator in Cat. III from 1-1-1979 is not justified. The management is directed to designate concerned workman Shri Sarju Singh as Filter Opeartor in Cat. III from 1-1-1979 and he should be paid difference of wages of Cat. II and Cat. III from 1-1-1979 within one month from the date of publication of the Award.

This is my Award.

I. N. SINHA, Presiding Officer
[No. L-20012/143/86-D. III(A)/IV. A]

का.अ. 3464.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मसम टाटा आइरन एण्ड स्टील कं. लि. का जमाडोबा कोलियरी के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 1, धनबाद के पंचाट को प्रकाशित करता है, जो केन्द्रीय सरकार को 21-10-88 को प्राप्त हुआ था।

S. O. 3464.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Jamadoba Colliery of M/s. Tata Iron & Steel Company Limited and their workmen, which was received by the Central Government on the 21-10-88.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD.

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 62 of 1982

PARTIES :

Employers in relation to the management of
6 & 7 Pits Jamadoba Colliery of M/s.
B.C.C. Ltd.

AND

Their Workmen.

PRESENT :

Shri S. K. Mitra,
Presiding Officer.

APPEARANCES :

For the Employers : Shri B. Lal, Advocate.

For the Workmen : Shri B. N. Sharma, Joint
General Secretary, Janta Mazdoor Sangh.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 29th September, 1988.

AWARD

By Order No. L-20012(122)82-D.III(A), dated, the 14th June, 1982, the Central Government in the Ministry of Labour, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal for adjudication :

"Whether the management of Messrs Tata Iron & Steel Company Limited in relation to their 6 & 7 Pits Jamadoba Colliery, Post Office Jamadoba, Distt. Dhanbad are justified in not accepting the age in respect of Shri Guhi Ram Rajwar, Cash Chaprasi as recorded in his school leaving certificate even after the National Coal Wage Agreement-II came in vogue. If not, to what relief is the workman concerned entitled?"

2. The case of the management of M/s. Tata Iron & Steel Co. Ltd., as appearing from the written statement, is as follows :

Guhiram Rajwar was appointed on 20-12-1943 and his date of birth was recorded in his service card as 28-12-1921 as per his own statement. He was working as Chaprasi in 6 & 7 Pits Jamadoba Colliery. The management issued individual letters to all workmen including the concerned workman sometime in 1952 calling upon them to intimate within three months to report any discrepancy in their recorded date of birth. The concerned workman did not complain of any discrepancy in his age in his service record. He was supplied with Identity Card sometime in 1959 wherein his date of birth was embossed as 28-12-1921. He was being issued Bonus Card every year wherein his date of birth was mentioned as 28-12-1921. At no time he raised any objection for correction of his date of birth. At the request of the recognised union, namely, Rashtriya Colliery Mazdoor Sangh, the management agreed to give one more opportunity to the workmen and a general notice was displayed sometime in 1977 informing all the workmen to produce reliable documents provided there was any discrepancy in their date of birth already recorded. The concerned workman made an application on 18-6-77 to the Divisional Manager alleging that his actual date of birth is 2-12-1925. He also mentioned in the application that he did not possess any school leaving certificate and requested to send him to the Medical Board to ascertain correct age and the Age Correction Committee consisting of the representatives of the management and the union was formed before whom applications of the concerned workman along with others were placed. The Committee acceded to his request and others, and they were referred to the Medical Board for assessment of their age. The Medical Board examined eight workmen of 6 & 7 Pits Colliery including him on 10-5-1978 and held that his approximate age, on the date of examination on 10-5-1978, was 57 years. By letter dated 22-5-1978 he was informed about the assessment of his age by the Medical Board and he was further informed that on the recommendation of the Board his date of birth was being corrected as 10-5-1921 in place of 28-12-1921 as mentioned in the records of the company. The recognised union took up the matter of assessment of age by Medical Board and contended that Medical Board had assessed the approximate age. After discussion it was decided that where the difference in the recorded age with the Company and the assessed age by the Medical Board varies from six months to one year, the date of birth recorded with the company would remain unchanged. In view of the above decision in the union-management meeting the concerned workman was informed by a letter dated 10-10-1978 that his date of birth recorded with the company, i.e. 28-12-1921 would remain unchanged and the earlier letter dated 22-5-1978 correcting his date of birth as assessed by the Medical Board was withdrawn. As per recorded date of birth he was to retire on 28-12-1981 on completion of 60 years of age. As per prevailing practice an employee is given one year extension of service beyond 60 years subject to his

medical fitness. He was accordingly referred to the Medical Board for ascertaining his fitness for one year extension of service. He was examined by the Medical Board on 4-2-81 which declared him fit for extension of his service for one year. By letter dated 20-2-1981 he was informed about the decision of the Medical Board for extension of service and he was accordingly granted extension of service for one year with effect from 28-12-1981 and was to retire from service on the expiry of the extended period of service on 28-12-1982. He stated earlier by letter dated 18-6-1977 that he did not possess any school leaving certificate and expressed his desire to be examined by Medical Board for ascertaining his date of birth. It is alleged that the school leaving certificate is a spurious and doubtful document which has been manufactured for the purpose of the present dispute. It has been contended that Janta Mazdoor Sangh has no right to raise the present dispute since it is neither a recognised or a representative union functioning in the colliery. In the circumstances, it has been submitted that the management was justified in not accepting the age in respect of the concerned workman as recorded in the alleged school leaving certificate.

3. The case of the concerned workman, as appearing from the written statement submitted by Janta Mazdoor Sangh, is as follows :

Guhiram Rajwar, the concerned workman, was employed as a Cash Chaprasi in 6 & 7 Pits Jamadoba Colliery of M/s. Tata Iron & Steel Co. Ltd.. By letter No. JMB/19/7806 dated 11/18-7-80 applications were invited by the management from the workmen for correction of their date of birth by producing school leaving certificate. Accordingly, Guhiram Rajwar, concerned workman, applied for correction of his date of birth and produced his school leaving certificate. But instead of making correction of his date of birth the management sent him to the Medical Board on 4-2-1981 and thus, his claim was ignored. He applied for his correction of date of birth as far back as in 1978, but at that time matric certificate was accepted and school leaving certificate was not taken into consideration for correction of date of birth. But after implementation of N.C.W.A. II school leaving certificate was accepted for correction of date of birth. The date of birth of the concerned workman mentioned in the school leaving certificate is 10-2-1927 and so he could not be lawfully superannuated before 10-2-87. Efforts were made to settle the dispute; conciliation proceeding was initiated, but due to the adamant attitude of the management the dispute could not be resolved. In identical cases actual date of birth has been corrected when school leaving certificate was produced by other workmen, but in this particular case discrimination has been made. In the circumstances, it has been prayed that the present reference be answered in favour of the workman.

4. In rejoinder to the written statement of the sponsoring union, the management has asserted that the concerned workman was examined by Medical Board on 4-2-1981 not to re-determine his age, but to assess his fitness for allowing him to work on

extension of service for one year after reaching the age of superannuation as per prevailing practice of the company. His age was finally decided and that was informed to him. The question of inviting any application from the concerned workman did not arise. The management has also dispured the other contentions of the union in the rejoinder.

5. In the rejoinder to the written statement of the management the union has denied that the concerned workman made any statement on the basis of which his date of birth was recorded as 28-12-1921. It has been denied that the concerned workman had ever stated that he did not possess any school leaving certificate. As a matter of fact the school leaving certificate produced by him is a genuine document in proof of his age.

6. The management has examined one witness, namely, MW-1 Ashok Kumar Singh, Asstt. Chief Personnel Manager and laid in evidence a sheaf of documents which have been marked Exts. M-1 to M-7. On the other hand, the sponsoring union has examined two witnesses including Kalicharan Rewant, son of the concerned workman since deceased and produced a number of documents which have been marked Exts. W-1 to W-11.

7. At the outset I would like to state that Guhiram Rajwar, the concerned workman left the land or living on 13-12-1985 and his wife and his son Kalicharan Rewani, at their instance were brought on record as representatives of the deceased workman by order dated 8-3-1988.

8. The case of the management is that Guhiram Rajwar, concerned workman, was appointed in the colliery on 20-12-1943 and that his date of birth is recorded in his Service Card on his own statement as 28-12-1921 and that he was working as Chaprasi in the colliery. The sponsoring union did not specifically deny that Guhiram Rajwar was appointed on 20-12-1943 in the colliery but has denied that his date of birth was recorded as 28-12-1921 as per his own statement. This being so, it can be concluded that Guhiram Rajwar was appointed as Chaprasi in 6 & 7 Pits Jamadoba colliery on or about 20-12-1943. It has been asserted by the management that separate letters were issued to all workmen including the concerned workman sometime in 1952 to intimate within three months any discrepancy in the recorded date of birth. The sponsoring union has denied this fact. The management has produced no evidence supportive of this fact. Nevertheless, the management has stated that Guhiram Rajwar and other workmen were supplied with Identity Cards sometime in the year 1959 and in the Identity Card the date of birth of Guhiram was embossed as 28-12-1921. The sponsoring union has denied this fact, but Guhiram himself has admitted in his letter dated 18-6-1977 addressed to Divisional Manager, M/s. Tata Iron & Steel Co. Ltd., Jamadoba (Ext. M-1) that his date of birth was recorded as 1921 in his Service Card and Identity Card but his actual date of birth was 2-12-1925. It is not the case of the management that the date of birth of Guhiram Rajwar was other than 28-12-1921. Hence,

it is obvious that Guhiram was aware that in his Service Card his date of birth was recorded as 28-12-1921. The management has further asserted that the Bonus Card in Form 'X' which was issued to him every year and there his date of birth was mentioned as 28-12-1921. The union has not made specific denial of this statement of fact. So it can be concluded that the date of birth of Guhiram Rajwar as recorded in the Bonus Card was 28-12-1921. From all these evidence, I come to the inescapable conclusion that it was within the knowledge of Guhiram Rajwar that his date of birth was recorded as 28-12-1921 in the records of the company.

9. The written statement of the management specifically discloses that at the request of the recognised union, namely, Rashtriya Colliery Mazdoor Sangh, the management agreed to give one more opportunity to the workmen and a general notice was displayed informing the workmen to produce reliable documents provided they felt any discrepancy in their date of birth already recorded and that this notice was given sometime in the year 1977. The sponsoring union has taken the position that the concerned workman was not aware of any such notice issued in 1977 and that such notice was not served on the concerned workman. Personal service of such notice does not arise since it is the case of the management that it was a general notice which was displayed inviting attention of all the workmen to produce reliable documents provided there was any discrepancy in the date of birth already recorded. The management has produced two notices regarding corrective of date of birth—one dated 12/23-4-1977 and the other dated July, 5/6, 1977 disclosing that on a request made by the union it was agreed to give one more chance to the existing employees to have their date of birth corrected in cases where it was felt that the same was wrongly recorded in company's record and for the purpose the workmen were directed to make application before 1st July, 1977 (Ext. M-7). By the other notice the last date for submission of application was extended to 31-8-1977 (Ext. M-6). M.W. 1 Ashok Kumar Singh has stated emphatically that in 1977 a general notice was issued to all the workmen inviting applications from them that if their date of birth were wrongly recorded they could apply to the management and that the concerned workman made an application in response to that notice stating that he had got no school leaving certificate and that his year of birth was 1925 and that he might be sent to the Medical Board for determination of his age. The management has produced the letter of the concerned workman on the subject of correction of age dated 18-6-1977 (Ext. M-1). In that letter the concerned workman has stated that his date of birth was recorded as 1921 in his Service Record and Identity Card, but his actual date of birth was 2-12-1925.

He has further stated in the letter that since he did not possess any school leaving certificate he requested the addressee i.e. Divisional Manager, M/s. Tata Iron & Steel Co. Ltd., Jamadoba to send him to Medical Board to ascertain his correct age. The sponsoring union has denied that the concerned workman made any such application. But that denial

is of no avail in view of the unimpeachable evidence presented in the letter of the concerned workman as stated above. The case of the management is that an Age Correction Committee constituted of the representatives of the management and the union was formed before whom the application of the concerned workman along with others were placed and that the said Committee acceded to the request of the concerned workman and others and referred them to the Medical Board for assessment of their age. This fact has not been disputed by the sponsoring union. The other facts that the Medical Board examined the concerned workman and seven others on 10-5-78 and that the age of the concerned workman was assessed as 57 years on the date of examination i.e. on 10-5-1978 and that by letter dated 22-5-1978 the same was communicated to the concerned workman. These facts have not been disputed by the sponsoring union. On the other hand, the management has produced the assessment of age of the concerned workman and others by Medical Board held on 10-5-1978 (Ext. M-2) and intimation of the result thereof was sent to him by letter dated 22-5-1978 (Ext. M-4). It appears that the Medical Board assessed his age as 57 years on 10-5-1978 i.e. the date of examination and accordingly the management, acting upon the report, changed his date of birth from 28-12-1921 to 10-5-1921. This is also evidenced from the letter of the management dated 22-5-1978, addressed to him (Ext. M-4). But later, so goes the case of the management in written statement, as per decision of the union—management meeting it was decided that where dates of the recorded age with the company and the assessed age by the Medical Board varied from six months to a year the date of birth recorded with the company would remain unchanged and that accordingly the recorded date of birth of the concerned workman remained unchanged and the earlier letter dated 22-5-1978 correcting his date of birth as per decision of the Medical Board was withdrawn. The position is also borne out by the letter of the management dated 4/8-10-1978 addressed to him. (Ext. M-5).

10. The case of the management is that the concerned workman was to retire on 28-12-1981 from service on completion of 60 years of age and that as per prevailing practice he was given one year extension of service beyond 60 years subject to his medical fitness and that he was examined by the Medical Board on 4-2-1981 for determination of his fitness for extension of service for one year. On the other hand, it is the case of the sponsoring union, that by letter No. JMB/19/7806 dated 11/18-7-1980 applications were invited by the management from workmen for correction of their date of birth by producing school leaving certificate and that the concerned workman applied for correction of his age but he was sent to the Medical Board on 4-2-1981 for determination of his age. In its rejoinder the management has emphatically denied this position and asserted that on 4-2-1981 the concerned workman was sent to Medical Board not for determination of his age, but to ascertain his medical fitness for extension of his service for one year. The sponsoring union could not produce any document to show that the management invited application from the

workmen by letter dated 11/18-7-1980 for correction of their date of birth by producing school leaving certificate. The letter dated 2-2-1981 of the concerned workman written to the management has been produced by the sponsoring union (Ext. W-6). It appears from the letter that the concerned workman produced school leaving certificate for correction of his age as per Advertisement No. JMB/19/7806 dated 11/18-7-1980. But the sponsoring union could not produce this advertisement. As a matter of fact the management has produced a notice dated JMB/211/6848 dated 16-6-1980 stating that at the request of the union it was agreed that one more chance would be given to those employees who could not apply for rectification of their date of birth when notice was given in 1977 (Ext. M-3). There was a clear direction in the notice that those employees who had already applied in 1977 and whose cases had already been considered in their favour or against were not to apply since their cases could not be considered again. Thus, it is seen that there was a clear direction in the notice that the workmen who applied earlier in response to notice of 1977 and whose cases had already been considered were not to apply. Since the concerned workman applied for correction of his age in 1977 and that was considered by the management, his case for correction of age made in 1981 was not likely to be considered by the management. That it was really so appearing from the evidence of MW-1 A. K. Singh who has stated that in 1980 the concerned workman made an application to the management for consideration of the decision of the management with regard to his date of birth in view of school leaving certificate, but his application was not considered for the reason that his case was considered earlier in 1977 and disposed of by the management.

11. The sponsoring union has stated in para 5 of its written statement that the concerned workman applied for correction of date of birth in 1978, but at that time matriculation certificate was accepted and school leaving certificate was not taken into consideration. By implication the above statement means that the concerned workman applied for correction of date of birth in 1978 on the basis of school leaving certificate. But this is a travesty of fact because no such application has been produced by the sponsoring union nor is there any evidence that school leaving certificate was produced in 1978 by the concerned workman. As a matter of fact the concerned workman could secure school leaving certificate only on 2-8-1980 (Ext. W-6) and so it was not possible on his part to produce it in 1978.

12. The sponsoring union has produced certain documents to show that in the cases of Kedar Rajwar (Ext. W-1), Jogeshwar Mistry (Ext. W-2), H. H. Mukherjee (Ext. W-4) the management corrected their age on the basis of school leaving certificate and by implication and also on facts the union has alleged that the concerned workman was discriminated by the management in the matter of correction of his date of birth on the basis of school leaving certificate. But there is no vestige of evidence to indicate that the cases of these persons, namely, Kedar Raiwar, Jogeshwar Mistry and H. H. Mukherjee were earlier

considered and decided by the management in 1977 and that in spite of these consideration and determination, their cases were again considered and again their date of birth was corrected on the basis of school leaving certificate. That being so, the plea of discrimination against the concerned workman as contended by the sponsoring union does not hold any water.

13. The sponsoring union has produced school leaving certificate of the concerned workman (Ext. W-7). This certificate discloses that the date of birth of the concerned workman was 10-2-1927. The Admission Register of the school also discloses so (Ext. W-11). The management pointed out some discrepancy in Admission Register by cross-examining WW-2 Rajendra Prasad Pandey, Head Master of the school. Anyway, the sponsoring union has not clearly established by evidence that the identity of Guhiram Rajwar who was a student of the school is the same as the identity of the concerned workman. Besides, this school leaving certificate was secured by the concerned workman and produced before the management much after his case for consideration of his date of birth was considered and decided by the management by assessment of his age by Medical Board. That being so, the certificate is of no avail to the sponsoring union in determining the age of the concerned workman.

14. The present reference is whether the management are justified in not accepting the age in respect of the concerned workman as recorded in his school leaving certificate even after the N.C.W.A. II came in vogue. But provisions of N.C.W.A. II does not envisage that the management should accept or consider the age as given in the school leaving certificate in preference to the age recorded in the statutory register. So, the provisions of N.C.W.A. II do not render any fillip to the case of the concerned workman as represented by the sponsoring union in the matter of correction of his date of birth.

15. The result is that the sponsoring union and for the matter of that the level representative of the concerned workman, have got no relief in the present reference.

16. Accordingly, the following award is rendered—the management of M/s. Tata Iron & Steel Co. Ltd. in relation to their 6 & 7 Pits Jamadoba colliery, P.O. Jamadoba, Distt. Dhanbad, are justified in not accepting the age in respect of Shri Guhi Ram Raiwar, Cash Chaprasi as recorded in his school leaving certificate even after the National Coal Wage Agreement-II came in vogue.

In the circumstances of the case I award no cost.

S. K. MITRA, Presiding Officer.

[No. L-20012/122/82-D. III.A/D.IV.A]

का. झा. 3465.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार, मसर्स भारत को बिग कोल लि. का कतराख

चौशुल्ह को निचरी के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्राय सरकार औद्योगिक अधिकरण (सं. 2), धनबाद के रचाव को प्रदर्शित करता है, जो केन्द्रीय सरकार को 24-10-88 को प्राप्त हुआ था।

S.O. 3465.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2) Dhanbad as shown in the Annexure in the Industrial dispute between the employers in relation to the Katras Chaitudih Colliery of M/s. Bharat Coking Coal Limited and their workmen, which was received by the Central Government on the 24th October, 1988.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 282 of 1986

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

PARTIES :

Employers in relation to the management of Katras Chaitudih Colliery of M/s. Bharat Coking Coal Limited and their workmen.

APPEARANCES :

On behalf of the workmen.—Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

On behalf of the employers.—Shri B. Joshi, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dated, Dhanbad, the 14th October, 1988

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following facts to this Tribunal for adjudication vide their Order No. L-20012(120)86-D.III(A), dated, the 7th June, 1986.

SCHEDULE

"Whether the action of the management of Katras Chaitudih Colliery of M/s. Bharat Coking Coal Limited in dismissing from service their workmen, Shri Surajdeo Mahato, Miner, was justified? If not, to what relief is the said workman entitled?"

The case of the workmen is that the concerned workman Shri Surajdeo Mahato was appointed as Permanent coal cutter at Katras Chaitudih colliery. He was issued with a chargesheet dated 17-8-73 for the offence of misconduct in the third shift. The allegation against the concerned workman was that on 14-8-73 he was on duty in 3rd shift as Bank's man at No. 3 Pit at about 11.30 P.M. and while the concerned workman was lowering down 9 workmen, he did not close the east side gate of the cage as a result one Pump Khalasi Durga Das Nag who was in the cage fell down from the cage and died. The

management alleged that the death of Durga Das Nag was caused due to the negligence in duty of the concerned workman and thus the concerned workman violated sub-section 1 of Section 52 of the Coal Mines Regulation, 1957 amounting to misconduct under clause 18(i)(q) of the Standing Orders. A criminal case was also started against the concerned workman which was registered as G.R. Case No. 1520/83 in which the concerned workman was acquitted. The enquiry conducted against the concerned workman was invalid and irregular. Even in the said enquiry the charges against the concerned workman was not established. The case of the concerned workman further is that he was not working as a Banksman on 14-8-73 and that one Samuddin Asraf was working as Bank's man at the alleged time of occurrence. The concerned workman on the finding of the enquiry officer was dismissed by the management. The concerned workman represented before the management for his reinstatement with full back wages but without any effect. The union of the workman raised an industrial dispute before the ALC(C), Dhanbad. The conciliation proceeding started by the ALC(C), Dhanbad ended in failure and thereafter the present reference was made to this Tribunal for adjudication. The action of the management in dismissing the concerned workman on the basis of invalid and irregular enquiry was unjustified and against the principles of natural justice. The dismissal of the concerned workman was against the provision of the Standing Orders. He was not dismissed by an authorised person. The punishment of dismissal of the concerned workman was too harsh and disproportionate to the alleged offence. On the above facts it has been prayed that an Award be passed in favour of the workman directing the management to reinstate him with full back wages from the date of his dismissal.

The case of the management is that the concerned workman committed contravention of provision of regulation 52(1)(c) of Coal Mines Regulation 57 while carrying on his duty as Banksman at No. 3 Pit top of the mine during the night shift of 14-8-73 commencing at 11 P.M. and ending at 7 A.M. of 15-8-73 and thereby caused the death of one workman named Durgadas Nag on duty. The concerned workman committed serious type of misconduct of contravention of provision of Coal Mines Regulation framed under the Mines Act, 1952 by committing breach of duty specifically fixed on him. The concerned workman had carried out his duty in a rash and negligent manner and as such he made himself liable for disciplinary action. The management issued a chargesheet dated 17-8-73 to the concerned workman. The concerned workman committed contravention of provision of Regulation 52(1)(i) of Coal Mines Regulation, 1957 which runs as follows :—

"The Banksman shall after persons have entered the cage sees that the gates on both sides are in position and closed before signalling for the cage to be lowered or raised."

The concerned workman submitted his reply to the chargesheet denying the charges levelled against him. His defence in the reply was that he was a miner

loader and he did not work as a Bank's man at the time of accident.

A departmental enquiry was made into the charges by the Enquiry Officer in presence of the concerned workman and he was given full opportunity to cross-examine the management's witnesses and to give him own statement. He was also given opportunity to examine his witnesses in defence but in spite of adjournments the concerned workman did not appear and examine any witnesses in his defence. The enquiry officer submitted his report holding the concerned workman guilty of the charge levelled against him. The competent authority considered the enquiry report and the relevant papers of the enquiry proceeding and agreeing with the finding of the enquiry officer approved dismissal of the concerned workman. Thereafter the concerned workman was dismissed from his service by letter dated 17-5-74. The Action of the management in dismissing the concerned workman is legal bonafide and according to the provision of the Standing Orders. The punishment imposed is justified considering the contravention of important specified regulation by the concerned workman causing death of one fellow worker by his rash and negligent act. The concerned workman was dismissed in the year 1974 but he did not raise any industrial dispute for a period of about 10 years. The said delay is not at all explained. The dispute is therefore too stale requiring any interference in the dismissal of the concerned workman.

As the concerned workman has been dismissed from service after holding domestic enquiry into the charges levelled against him it was prayed on behalf of the management to decide the preliminary point whether the enquiry was fair and proper. After hearing the parties preliminary issue whether the enquiry was fair and proper was first heard as a preliminary point. The Tribunal by its order dated 30-3-88 held that the enquiry was fair proper and in accordance with the principles of natural justice and thereafter the case was fixed for hearing on merit on the materials already forming part of the enquiry proceeding.

Now the point for consideration is whether the management was justified in dismissing the concerned workman from service. In other words it has to be decided whether the charge against the concerned workman was established on the materials adduced by the management in the enquiry proceeding.

The management produced all the documents relating to the enquiry proceeding which are marked Ext. M-1 to M-11. The workmen have also filed certified copy of the judgement in G.R. Case 1520/73 dated 13-1-81 which is marked Ext. W-1.

Admittedly, the concerned workman was a permanent miner/loader but it appears that the management was sometimes taking work of a Banksman in the absence of regular banksman of the colliery. Ext. M-1 is the chargesheet which will show that the concerned workman has been chargesheeted for misconduct under clause 18(1)(q) of the standing Orders as he had violated sub-clause 1 of Section 52 of CMR, 1957. From the facts disclosed in the chargesheet it appears that the concerned workman was on duty

on third shift on 14-8-73 as Banksman at No. 3 Pit and while lowering down the cage at about 11.30 P.M. did not close the gate of the cage as a result of which a workman in the cage fell down from the cage and died. Ext. M-2 is the reply of the concerned workman to the chargesheet Ext. M-1. The reply of the concerned workman Ext. M-2 is on the back of the chargesheet Ext. M-1. It will appear from his reply that after his attendance being marked as Miner/loader, he went inside the mine and learnt that one person has fallen down dead from the incline and that Shri Upadhyaya overman Incharge told him to accept that he was working on the cage. The concerned workman refused to accept this and therefore he has been falsely alleged with the misconduct and that he would examine witnesses to show that he had not committed the alleged misconduct. In the statement before the enquiry officer the concerned workman stated that on 14-8-73 he was on duty at No. 3 Pit as Miner in the third shift. At 12 midnight he went to the pit. The shift of Trammers and Hazri works begins at 11 P.M. in the night shift. He took the cap lamp and as soon as he reached the pit top he heard the accident and then he returned to the lamp cabin. He stated that Shri Upadhyaya Overman asked him to go to work as Banksman but he did not agree to work as Banksman. Further he has stated that when Shri N. P. Choubey and Shri G. B. Upadhyaya went down the mine he acted as Banksman as per their guidance. He has admitted that Shri Durga Das Nag had died due to the fall from the cage. He has stated that he had worked as a Banksman for about an hour and after that he remained sitting there and at that time another man took charge as Banksman. Thus from his statement it is clear that Durga Das Nag had died in the third shift of 14-8-73 at No. 3 Pit at about 11.30 P.M. It will also appear that the concerned workman had worked as Banksman in the said night. It appears therefore that the concerned workman although was a Miner/loader he knew the work of Banksman and as such he worked as a Banksman.

Now the question is whether the concerned workman was working as Banksman when Durga Das Nag fell down from the cage. The case of the concerned workman as stated in his statement before the enquiry officer in the enquiry proceeding Ext. M-9 is that he had worked as Banksman for sometime after the accident and that there after another man took charge of banksman. Now let us see the evidence adduced on behalf of the management. The management examined four witnesses before the enquiry officer. MW-1 is Shri Basu Singh Attendance Clerk of Pit No. 3. He stated that on 14-8-73 he was working as Attendance Clerk in the third shift at No. 3 Pit cabin and that at about 11.15 P.M. he got information that the Banksman was absent and he reported this Matter to Shri G. B. Upadhyaya (MW-3). He has stated that Shri G. B. Upadhyaya asked Shri Surajdeo Mahato to work as Banksman on 14-8-73 and thereafter the concerned workman went up to resume his duty as Banksman as per instruction of Shri G. B. Upadhyaya. He has further stated that he had marked the Attendance of the concerned workman as Banksman at that shift. He has stated that he was in the

cabin when he heard about the accident and when he came out he heard that one man named Durga Das Nag had fallen from the cage and died. He was **cross-examined by the concerned workman. The concerned workman** questioned MW-1 whether he got his attendance marked at by mid night and in his answer MW-1 stated that the concerned workman had reported for duty at 11 P.M. and left at 12.45 A.M. and that the concerned workman was feeling **shaky** and hence Shri Shamsuddin Asraf replaced the concerned workman. It will thus appear from the evidence of MW-1 that the concerned workman was deputed to work as Banksman by the Overman Shri G. P. Upadhyaya in the third shift of 14-8-73 at pit **cabin** that the concerned workman had reported for duty at 11.00 P.M. and had left at 12.45 A.M. MW-3 is Shri G. P. Upadhyaya, Overman who was on duty on 14-8-73 at No. 3 Pit as Overman in the third shift. He has stated that at about 11.00 P.M. the Attendance Clerk Shri Basu Singh MW-1 informed him that the Banksman of that shift had not reported for duty and then MW-3 asked MW-1 to arrange for an alternative and on this MW-1 enquired from MW-3 whether he can depute Shri Surajdeo Mahato the concerned workman as Banksman. MW-3 has stated that he agreed to that and instructed MW-1 to put the concerned workman on duty as Banksman in the third shift on that date. MW-3 has further stated that at about 11.20 P.M. there were shouting that a man had fallen from the cage and then he came out of his Lamp Cabin and instructed the concerned workman to stop the cage and then the concerned workman signalled to stop the cage and the cage was stopped. MW-3 asked the concerned workman to signal for hauling the cage slow and thereafter the concerned workman signalled and the cage came up slowly. He has stated that he enquired from Shri Girja Mishra who was in that cage and learnt from his that Durga Das Nag was standing near the door of the cage and fell down. MW-3 thereafter reported the matter to Shri N. P. Choubey, Asstt. Manager MW-2 who was at a distance of about 200 feet away from the pit top. This witness was not cross-examined on behalf of the concerned workman. It will appear from the evidence of MW-3 that the concerned workman was on duty as Banksman in the cage after the concerned workman was deputed for duty as Banksman. The defence of the concerned workman taken in his statement before the Enquiry Officer does not appear to be true in view of the fact that the concerned workman had actually been deputed to work as Banksman when MW-3 had arrived on hearing that a person fell down from the cage and died. The concerned workman had stated that he had worked as Banksman. When MW-3 G. P. Upadhyaya and N. P. Choubey, MW-2 had asked him to work as a Banksman after the accident.

The said statement of the concerned workman has neither been supported by MW-2 and MW-3. MW-2 Shri N. P. Choubey, Asstt. Manager has stated that on 14-8-73 at about 11.45 A.M. one person had fallen down. From the cage at No. 3 Pit he was not present at the time of the accident. He had gone to No. 3 Pit top and had found the concerned workman on duty as Banksman. He had gone down the shift and the concerned workman gave the necessary signals

for lowering the cage. After going down the pit he removed the dead body of Durga Das Nag through help of some workman and brought the dead body to the pit top. This witness was not also cross-examined by the concerned workman. From his evidence also it appears that the concerned workman was already working as a Banksman in the cage and he does not support the statement of the concerned workman that the concerned workman was asked by him and Shri Upadhyaya told to work as Banksman after their arrival on learning about the accident.

The most important witness in the case 1, MW-4 Shri Girja Mishra a Pump Khalasi of No. 3 Pit. He has stated that on 14-8-73 he was on duty at No. 3 Pit as Pump Khalasi in the third shift. He has stated that at about 11.30 A.M. Shri Durga Das Nag Pump Khalasi fell down from the same cage in which he was also going down. He has further stated that the concerned workman was on duty as Banksman on 14-8-73 in the third shift. He has very clearly stated that the concerned workman had not fenced the cage. The concerned workman did not cross-examine him and no reason has been assigned as to why this witness MW-4 who is a fellow workman of the concerned workman would depose falsely against the concerned workman. It is clear from the evidence of MW-4 that the concerned workman was working as Banksman in the third shift on 14-8-73 at No. 3 Pit and that Durga Das Nag fell down from the cage as the concerned workman fenced the cage.

Thus considering the evidence of MW-4 along with the evidence of other MWs it appears that the concerned workman was working as Banksman in third shift of 14-8-73 at No. 3 Pit and that at about 11.30 P.M. Durga Das Nag Pump Khalasi fell down from the cage of which the concerned workman was the Banksman and that the concerned workman had not fenced the cage.

The charge levelled against the concerned workman is that he violated sub-section (1) of Section 52 of Coal Mines Regulation-1957. Section 52(1) provides that the Banksman shall after persons have entered the cage see that the cage gates on both sides are in position and closed before signalling for the cage to be lowered or raised. The evidence of MW-4 shows that the concerned workman who was working as a Banksman at the alleged time of occurrence had not closed the gates of the cage and as such Durga Das Nag fell down from the cage being lowered down on the signal of the Banksman. The concerned workman therefore contravened his duty as a Banksman in not closing the gate of the cage before signalling for the cage to be lowered down at such it is a clear case in which the concerned workman as Banksman had neglected his duty thereby causing the death of one of his fellow workman.

Ext. M-4 is the standing orders for Katras Chaitodih Colliery. In clause 18(1)(q) defines that any breach of the Mines Act, 1952 or any other act or any rules regulation or bye laws thereunder, or of any standing orders is misconduct for which disciplinary action has to be taken. As held above the

concerned workman had violated his duties as Banksman as provided in Section 52(1) of the Coal Mines Regulation 1957 and as such the said breach will be covered under clause 18(1)(q) of the Standing Orders and is a misconduct.

It has been submitted on behalf of the workman that the concerned workman was not appointed as Banksman by a competent authority in as much as he was not authorised to work as Banksman by a Manager of the colliery. It is true that there is no evidence to the effect that the concerned workman had been authorised to work as Banksman but there is clear evidence of the fact that the concerned workman was in fact authorised to work as a Banksman by the Overman Incharge of the Mine and the concerned workman consented to work as Banksman and in fact was working as Banksman at the time of the accident and that it was due to the negligence of the concerned workman that a person fell down from the cage and died in as much as the concerned workman as Banksman had not closed the gates of the cage. The point in issue is not actually whether the concerned workman was asked to work as Banksman by the Manager but the point in issue is whether the concerned workman was negligent in his duty while working as Banksman and the said fact has been established.

In view of the above discussions made above I hold that the charge against the concerned workman has been established. It will appear that due to gross negligence on the part of the concerned workman one of the workman fell down from the cage and the concerned workman did not comply with the safety measure which is most essential in the mine as negligence of one person may endanger the lives of several persons working inside the mine. In this view of the matter I think the punishment of dismissal of workman for negligence in a mine endangering lives of others does not appear to be severe.

It will appear from Ext. M-3 that the concerned workman was dismissed from service with effect from 17-5-74. The present reference order is dated 7-8-86. There is no explanation as to why the concerned workman or his union had not raised the industrial dispute for such a long period. It appears therefore that the present industrial dispute has been raised after a great delay. The fact that no explanation has been given for the delay shows that the concerned workman had accepted the punishment and was satisfied about his conduct and as such he did not raise the dispute soon after his dismissal from service.

In the result, I hold that the action of the management of Katras Chaitodih Colliery of M/s. BCCL in dismissing from service the concerned workman Shri Surajdeo Mahato was justified and consequently the concerned workman is entitled to no relief.

This is my Award.

I. N. SINHA, Presiding Officer
[No. L-20012(120)/86-D.IIIA/IVA]

का. अ. 3466.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में, केन्द्रीय सरकार, सैमर्स भारत कोकिंग कोल लि. का कुसुन्दा कोलियरी के प्रबन्धन में सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण स. 1, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-10-88 को प्राप्त हुआ था।

S. O. 3466.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Kusunda Colliery of M/s. Bharat Coking Coal limited and their workmen, which was received by the Central Government on the 21st October, 1988.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 3 of 1985.

PARTIES :

Employers in relation to the management of Kusunda Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen

PRESENT :

Shri S. K. Mitra,
Presiding Officer.

APPEARANCES :

For the Employers : Shri R S. Murty, Advocate.

For the Workmen : Shri B. Lal, Advocate and
Shri D.K. Verma, Advocate.

State : Bihar.

Industry : Coal.

Dated, the 30th September, 1988

AWARD

By Order No. L-20012(353)/84.D.III(A), d the 25th January, 1985, the Central Government, the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following industrial dispute for adjudication to this Tribunal :—

"Whether the action of the management of Kusunda Colliery of Messrs. Bharat Coking Coal Ltd., P.O. Kusunda, District Dhanbad

in dismissing Shri Harihar Ram Gupta. Loading Clerk from service is justified? If not, to what relief is the concerned workman entitled?"

2. The case of the management of Kusunda Colliery as appearing from the written statement, details apart, is as follows :

Harihar Ram Gupta, the concerned workman, was working as Loading Clerk in Kusunda Colliery. On receipt of a report in regard to certain acts of misconduct having been committed by him, the Agent Manager issued a chargesheet against him on 19th September, 1981 under the certified Standing Orders of Kusunda and Nayadi colliery. The concerned workman was assigned on the following charges :

"Charge No. 1 : That while working as loading clerk in Kusunda Colliery you falsely inflated the attendance of Sri Prabhu Bhuiya casual wagon loader of Kusunda colliery for July '81 from 24 to 46. Thus you indulged in fraud and dishonesty in connection with the employer's business or property. (This is a misconduct under S.O. 18(1)(a) of the aforesaid Standing Orders).

Charge No. 2. That while working as loading clerk in Kusunda colliery you had regularly informed Sri Prabhu Bhuiya casual wagon loader that you would increase his attendance falsely and take the resultant extra money yourself as you were doing in the case of others. This amounts to fraud and dishonesty in connection with the employer's business or property. (This is a misconduct under S.O. 18(i)(a) of the aforesaid standing orders).

Charge No. 3 : That while working as loading clerk in Kusunda colliery you demanded from Sri Prabhu Bhuiya, casual wagon loader an amount of Rs. 600 as bribe for inflating his attendance for the month of July 1981 and had actually received the said amount as bribe from Sri Prabhu Bhuiya on 11-8-1981 at about 3 P.M. (when you were caught red-handed as a result of the trap laid by the SPE/CBI, Dhanbad Branch). (This is misconduct under S.O. 18(i)(b) of the aforesaid standing orders).

Charge No. 4 : That while working as loading clerk in Kusunda colliery you threatened Sri Prabhu Bhuiya, casual wagon loader that if he does not pay you Rs. 600 for inflating his attendance for July '81, he will not be allowed to work in future. (This is misconduct under S.O. 18(i)(c) of the aforesaid standing orders)." A detailed statement of allegations on which charges were based accompanied the chargesheet. The concerned workman submitted his explanation dated 29-3-81 to the chargesheet. But

the explanation submitted by him was not found satisfactory and a detailed enquiry was ordered by the management. Sri B. M. Lall, Personnel Manager (IR) E of the Head Office of M/S. B.C.C. Ltd. was appointed as Enquiry Officer. Sri Lall held the enquiry after giving notice to him. He fully participated in the domestic enquiry and took assistance of a co-worker who happened to be the Area Secretary of Rashtriya Colliery Mazdoor Sangh. The witnesses for the management were examined in his presence and in the presence of his co-worker. He was given full opportunity to cross-examine the witnesses for the management. He availed himself of such opportunity. He was further given an opportunity to make out his own statement which he did. He was given opportunity to produce his witnesses in support of his defence and the evidence of defence witnesses was also recorded in his presence and in the presence of his co-worker. Domestic enquiry was held in accordance with the principle of natural justice. On the basis of enquiry held, the Enquiry Officer submitted his report finding him guilty of the charges framed against him. The report of the Enquiry Officer and the proceedings of the enquiry were placed and considered by the General Manager, Kusunda Area who accepted the finding of the Enquiry Officer and came to the conclusion that he should be dismissed from service. Accordingly the General Manager, Kusunda Area, dismissed him from service by an order dated 9-1-1984. Since charges framed against him were of very serious in nature and since he was found guilty of the charges, the management was justified in dismissing him from service. B.C.C. Ltd. is a Government Company within the meaning of Section 617 of the Companies Act. The employees of the company are public servant within the meaning of Section 21(12) of the Indian Penal Code. The management prayed that in the first instance the question relating to fairness and validity of the domestic enquiry be decided as preliminary issue and in case the domestic enquiry was held to be not fair and proper, the management further prayed for an opportunity to produce evidence afresh on merits of the charges.

3. The case of the concerned workman as appearing from the written statement submitted by the sponsoring union, namely, Rashtriya Colliery Mazdoor Sangh, is as follows :—

Harihar Ram Gupta, the concerned workman, was working as permanent employee at Kusunda Colliery for a pretty long time to the satisfaction of all concerned. But unfortunately due to trade-union rivalry and other private grudge some false cases were instituted against him to the C.B.I. to the effect

that he was demanding bribe for inflating the attendance of some workmen. A trap was laid and it was alleged that he was caught red handed while accepting bribe of Rs. 600/- from one Prabhu Bhuia, casual worker, for inflating his attendance. The C.B.I. instituted a criminal case being R.C. Case No. 16/81, and after detailed investigation came to a finding that he was not involved in taking bribe. On the contrary the amount alleged to have been received by him was on different count and it did not make out a criminal case against him. The C.B.I. submitted a final report which was duly accepted by the Court and he was discharged. The C.B.I. was constrained to observe that the procedure followed at the colliery for making attendance of workers and for making payment to them were not proper. It has been asserted by the sponsoring union that whereas the C.B.I. found out the truth after investigation the Enquiry Officer, who was a part and parcel of the management and who himself is the Personnel Manager, well versed in deploying man-power including the wagon loader, had deliberately acted against his own conscience in finding he concerned workman guilty of the charges which he did in perverse manner in order to please his superior. During the pendency of investigation of criminal case by C.B.I. the management charge-sheeted him for accepting a bribe of Rs. 600/- from Prabhu Bhuia which was also the subject-matter of the C.B.I. investigation and also for marking inflated attendance of Prabhu Bhuia. He denied the allegation and replied to the charge-sheet, but the Enquiry Officer held domestic enquiry in utter violation of principle of natural justice and danced to the tune of the management. The Enquiry Officer was totally biased and threw to the winds allocations of the principles of natural justice. It has been alleged that Jagdish Nonia and N. Banerjee were examined as witnesses for the management at the domestic enquiry on 3-12-81 and they were cross-examined and discharged. But the Enquiry Officer without fixing any date in the enquiry examined them once again on 2-7-82 in order to make out a case that their earlier statements were not correct. These witnesses were cross-examined by the Enquiry Officer, but he refused to give him (concerned workman) opportunity to re-call them for further cross-examination. He called for certain relevant documents, such as, attendance register and Form IV Register showing the actual position, but these were not produced nor given to him. Jagdish Nonia and N. Banerjee were brought to disown their own earlier statements give his true domestic enquiry. At Kusunda Colliery there is only a handful of wagon loaders on rolls and a large number of wagon loaders are engaged privately by the management to load wagons to avoid demurrage and other reasons. The management did not sustain any loss due to so-called inflated attendance. On the contrary, the amount of wages paid to the wagon loaders were calculated on the basis of actual wagons loaded/un-loaded. Anyway, proper procedure was not followed by the management in that the amount of work done by private wagon loaders was also being recorded in the names of wagon loaders on the roll. He's totally innocent and has not committed any misconduct as alleged in the chargesheet. In the circumstances, the union has prayed that the action of the management in dismissing the concerned workman from service be held to be not justified.

4. In the rejoinder to the written statement of the sponsoring union, the management has admitted that the concerned workman was a permanent employee in Kusunda colliery, but has denied that any false case was instituted against him on account of trade union rivalry. It has been asserted that the domestic enquiry was held inconformance to the principle of natural justice and there occurred no breach thereof. The management has submitted that it has suffered loss on account of misconduct committed by the concerned workman and denied all other assertions made by the concerned workman in his written statement.

5. The management has examined the Enquiry Officer, Shri B. M. Lal and laid in evidence domestic enquiry proceedings which have been marked Exts. M-1 to M-5/2 and also the documents produced by the concerned workman in domestic enquiry.

On the other hand, the concerned workman has examined Jagdish Nonia as W.W.1 and produced certified copy of the order-sheet of the Court, marked Ext. W-1 and the final report of C.B.I., marked Ext. W-2.

6. It appears that the management submitted chargesheet dated 19-9-81 accompanied by detailed statement of allegations against the concerned workman. From the statement of allegations it appears that on 10-8-81 Prabhu Bhuia, one of the casual wagon loader of Kusunda colliery, reported to Dhanbad Branch of Delhi Special Establishment (C.B.I.) inter alia, that Harihar Ram Gupta, the concerned workman, was habitually demanding and accepting illegal gratification (bribe) from various casual labourers and others and was regularly informing Prabhu Bhuia that he could increase his (Bhuia's) attendance and take resultant extra money. On the said date the concerned workman demanded a bribe of Rs. 600 from Prabhu Bhuia for making his number of attendance more than his actual attendance and threatened him that in case he did not pay that amount he would not allow him to work in future. Prabhu Bhuia reported the matter to C.B.I. and S. Y. Khan, S.I./S.P./C.B.I., Dhanbad, recorded his statement and made verification report and consequently First Information Report about the allegations was prepared under Section 154 of Cr. P.C. on 10-8-1981. The C.B.I. made a detailed scheme for entrapping the concerned workman while accepting bribe from the decoy Prabhu Bhuia and actually caught him red handed while accepting the bribe from Prabhu Bhuia. In the context of facts and circumstances narrated in the statement of allegations the following charges were framed against the concerned workman by the Agent/Manager of Kusunda Colliery, Kusunda Area, Dhanbad, on 19-9-1981 :

"Charge No. 1.—That while working as loading clerk in Kusunda Colliery you falsely inflated the attendance of Sri Prabhu Bhuia casual wagon loader of Kusunda colliery for July, 81 from 24 to 46. Thus you indulged in fraud and dishonesty in connection with the employer's business or property. (This is a misconduct under S.O. 18(1)(a) of the aforesaid Standing Order).

Charge No. 2.—That while working as loading clerk in Kusunda colliery you had regularly informed Sri Prabhu Bhuiya casual wagon loader that you would increase his attendance falsely and take the resultant extra money yourself as you were doing in the case of others. This amounts to fraud and dishonesty in connection with the employer's business or property. (This is a misconduct under S.O. 18(i)(a) of the aforesaid standing orders).

Charge No. 3.—That while working as loading clerk in Kusunda colliery you demanded from Sri Prabhu Bhuiya, casual wagon loader an amount of Rs. 600 as bribe for inflating his attendance for the month of July 1981 and had actually received the said amount as bribe from Sri Prabhu Bhuiya on 11-8-81 at about 3 P.M. (when you were caught red-handed as a result of the trap laid by the SPE/CBI, Dhanbad Branch). (This is misconduct under S.O. 18(i)(b) of the aforesaid standing orders).

Charge No. 4.—That while working as loading clerk in Kusunda colliery you threatened Sri Prabhu Bhuiya, casual wagon loader that if he does not pay you Rs. 600 for inflating his attendance for July 1981, he will not be allowed to work in future. (This is misconduct under S.O. 18(i)(n) of the aforesaid standing orders).

7. The concerned workman was directed to submit his written explanation in respect of the above charges by 23-9-1981 and pending enquiry into the charges, he was placed under suspension with effect from 21-9-1981.

8. The concerned workman submitted his explanation dated 23-9-1981 to the charges levelled against him. The explanation submitted by him reads as follows :

"I have just now come across the above notice today (i.e. on 23-9-1981), and I have to state most respectfully as follows :—

1. That publication of the above notice is purely an after thought and counter blast of Title Suit No. 205 of 81 filed by me in the Munsif First Court challenging your legal authority and jurisdiction.
2. That on 21-9-1981, the date of institution itself, before service of summons/notices upon you through court, you appeared in the suit through your lawyer without approval of the appropriate authorities of M/s. B. C. C. L.
3. That it reveals you are personally interested in the matter as you have some personal grudge against me.

4. That it further reveals that when your legal authority and jurisdiction was duly challenged in a civil court of competent jurisdiction and you had necessary knowledge thereof you in utter disregard of the court's order to show cause, yourself have issued a chare sheet upon me asking me to show cause. This is patently illegal and unjustified.

5. That apart from this it is also known to you that with regard to the same allegation a criminal case is pending in a court of competent jurisdiction it is the criminal court which will decide as to whether I am actually guilty or not. Without waiting for the court's decision you have interfered with and have usurped the jurisdiction of the Court.

6. That this shows you are out to victimise me even by unlawful means and ways by disregarding the court's order and by usurping the jurisdiction of the court.

7. That I am perfectly innocent and I have not committed any offence at all.

8. That the charge no. 1 levelled against me is far from truth and baseless because attendance of Prabhu Bhuiya for July 1981 was not marked by me but it was by Jagdish Nonia another Loading Clerk. As such I have no concern with the alleged inflation of attendance.

9. That the charge no. 2 automatically stands falsified in view of the above. More over it is vague, it does not disclose as to when or on which dates alleged information was given. The words "regularly informed" are vague and indefinite. It also does not speak of as to upon whom also fraud was exercised and what amount was involved and on which dates such incidents occurred.

10. That so far as charge no. 3 is concerned is based on charge No. 1 and is altogether false, inflation of attendance not having been made by me the question of receiving bribe is purely a concoction and a white lie. I deny the charges categorically, I never received any bribe from Prabhu Bhuiya or any body else.

11. That the Charge No. 4 is again vague and indefinite besides being false. When on which date I had threatened Prabhu Bhuiya is not disclosed in the C/Sheet. It is well known to you that I have no power to allow any workman to work nor to stop him. The question of threatening does not arise. It is the manager who can allow or disallow any person and not a Loading clerk, under the Coal Mines Regulation 1957.

12. That I deny all the charges levelled against me and I urge to find out all the persons who are responsible for the alleged inflation of attendance.
13. That the allegations are highly defamatory in nature and by its publication in the paper I have been intentionally lowered down in the Society. This is motivated because I am an active life member of RCMS (INTUC) and I have some union rivalry with Prabhu Bhuiya.
14. That the Management wants to humiliate me and spoil my image as an RCMS (previously INTUC) leader and to cast down my T.U. activities.
15. That the standing order under which charges have been framed have not been detained. Not only that the said standing order is not applicable. After 1972, Industrial Employment standing order for Coal Mines Industry has been made applicable under which no charge having been framed the charge sheet itself is technically wrong and vitiated.

I, therefore, request you to exonerate me from the charges levelled against me and cancel your letter No. KC/PS/81/2070 dt. 19-9-79, failing which I shall be constrained to initiate legal proceedings against the responsible persons for defamation, insult and damages caused to me.

Sd/-

Harihar Ram Gupta,
23-9-81."

9. Admittedly, Harihar Ram Gupta, the concerned workman, was a permanent employee in Kusunda Colliery and at the relevant time was posted as Loading Clerk. I consider it necessary to decide and dispose of one point raised by the concerned workman in his explanation to the charge-sheet. The management has asserted that the concerned workman is governed by certified Standing Orders as applicable to Kusunda and Nayadih colliery. But the concerned workman has contended that the said Standing Order is not applicable and that after 1972 Industrial Employment Standing Orders for Coal Mining Industry has been made applicable under which no charge was framed and hence the charge-sheet itself is technically wrong and vitiated. At the time of hearing Sri B. Lal, Advocate, for the concerned workman did not make any submission on this point nor could he produce any document to show that Model Standing Orders for Industrial Establishment in Coal Mines are applicable in the case of Kusunda Colliery. Sri R. S. Murty Advocate for the management has emphatically asserted that the certified Standing Orders as applicable to Kusunda and Nayadih Colliery governs the case of the concerned workman since he was an employee of Kusunda Colliery. I find no reason to discard the submission of Sri Murty. Hence, the conclusion is

reached that the concerned workman is governed by the certified Standing Orders applicable to Kusunda and Nayadih Colliery.

10. There remains no dispute that Harihar Ram Gupta the concerned workman was a permanent employee of Kusunda colliery and was posted as Loading Clerk in the said colliery at the relevant time. There remains also no dispute that Prabhu Bhuiya was engaged as casual wagon loader in Kusunda colliery at the relevant time. The allegation of the management is that the concerned workman inflated attendance of Prabhu Bhuiya for July, 1982 and thereby indulged in fraud and dishonesty with respect to employer's business or property and that he informed Prabhu Bhuiya that he would increase his attendance falsely and would take resultant extra money himself which amounts to fraud and dishonesty in connection with company's property and that he threatened Prabhu Bhuiya that if he did not pay him Rs. 600 for inflated attendance for July, 1981 he would not be allowed to work and this amounts to misconduct within the meaning of Standing Order 18(i)(r) and that actually he received a bribe of Rs. 600 from Prabhu Bhuiya on 11-8-81 at about 3 P.M. He was caught red-handed by the official of SPE/C.B.I., Dhanbad commonly known as C.B.I. following well-laid trap case.

11. The management has not produced the duty chart of Loading Clerk of Kusunda Colliery. But in the statement accompanying the charge-sheet it has been stated that the duties of Harihar Ram Gupta included preparation of records relating to attendance of wagon loaders including casual wagon loaders and preparation of records relating to quantum of work done by them day to day. The management has not examined any competent witness to vouch for this fact. On the other hand, Sri N. Banerjee Safety Officer of the colliery who was examined by the management has stated that when wagons are placed in the siding, Kamta Singh, Loading Supervisor, Harihar Ram Gupta, Loading Clerk and Loading Peon who remain at the siding telephone to the office and after receiving the inform of placement of wagons, he makes enquiry as to whether there is sufficient coal or not etc. etc. He has further stated that the concerned workman engaged the loading coolies after wagons are placed and it is his duty to get the wagons loaded but the attendance is marked by Jagdish Nonia another Loading Clerk. He has also stated that except loading no other work is taken from the concerned workman. But in the absence of Jagdish Nonia he also does the work of marking the attendance of workers. Jagdish Nonia has stated that his work is to place wagons, to mark attendance and to look after the loading of wagons and that the concerned workman also does the same work and that both of them use to mark attendance of casual wagon loaders. Thus, it is seen that according to Sri N. Banerjee it was the primary duty of the concerned workman to engage loading coolies after the wagons are placed and that the attendance was marked by Jagdish Nonia and in the absence of Jagdish Nonia he used to do the work of marking attendance of workers. But according to Jagdish Nonia marking of attendance was the joint functions of the concerned workmen

and him. This Jagdish Nonia seems to be a very undependable witness. At the time of domestic enquiry he deposed for the management and afterwards made written statement impugning on the concerned workman on the ground that at the time of his earlier evidence before the Enquiry Officer he felt nervous. It is strange that without verifying as to whether he was actually nervous or not, the Enquiry Officer accepted his written statement. Anyway, this Jagdish Nonia has deposed before me stating that he was coerced into making written statement at the instance of C.B.I. officials and officers of the management including Enquiry Officer, Sri B. M. Lal. This being the position, I consider that it is not safe to rely on the evidence of Jagdish Nonia in so far as the duties of the concerned workman is concerned. Relying on the evidence of Sri N. Banerjee I hold that it was the primary duty of the concerned workman to engage loading coolies after the wagons are placed and get the wagons loaded and that marking of attendance of workers was the duty of Jagdish Nonia, but in the absence of Jagdish Nonia the concerned workman also used to mark attendance of the workers.

12. Admittedly, it is the case of the management that Prabhu Bhuiya gave a bribe of Rs. 600/- to the concerned workman for inflating his attendance for the month of July 1981 from 24 to 46. Prabhu Bhuiya in his statement before the C.B.I. has stated (Ext. P-1 in domestic enquiry) that the concerned workman threatened him not to give him any work unless he paid him (concerned workman) money. I have stated in details the duties of the concerned workman and it was not within his province to give work or not to give any work to any workman. So, it can be concluded that Prabhu Bhuiya was under no threat or coercion from the concerned workman when he allegedly paid him bribe. This being so, he is an accomplice and distinction shall be drawn between cases where a person offers a bribe to achieve his own purpose and where one is forced to offer bribe under threat of pecuniary loss or harm or coercion. Persons under the last category can hardly be accomplices, but persons under the first category are accomplices. In this view of the matter Prabhu Bhuiya is none but an accomplice in the matter of his alleged payment of bribe to the concerned workman. Even though under section 33 of the Evidence Act a conviction is not illegal merely because it proceeds upon uncorroborated testimony of accomplice, Judicial discretion has it that some corroboration is necessary to prove the offence of the accused.

13. Charge No. 2 as framed against the concerned workman envisages that since he regularly informed Prabhu Bhuiya that he would increase his attendance falsely and take the resultant extra money himself as he had done in the case of others, this act of his amounts fraud and dishonesty in connection with employer's business and property—a misconduct under clause 18(i)(a) of the Standing Orders of the colliery. Clause 18(i)(a) runs as follows :

"Theft, fraud or dishonesty in connection with the employer's business or property."

It seems that simply informing Prabhu Bhuiya that his attendance could be increased and resultant extra money could be taken by him, the concerned

workman has been assigned on charge under section 18(i)(a) of the Standing Orders. It is beyond my comprehension as to how such charge could be framed and even so, the Enquiry Officer has found that this charge has been proved. This is considered nothing but a mechanical approach to the matter by the Enquiry Officer without application of his mind. I have no hesitation to come to the conclusion that this charge is not at all sustainable and far so upon the evidence on record.

14. I will now consider Charge Nos. 1 and 4 as framed by the management. Charge No. 1 reads as follows :—

"Charge No. 1 : That while working as loading clerk in Kusunda colliery you falsely inflating his attendance for July '81 he will casual wagon loader of Kusunda colliery for July '81 from 24 to 46. Thus, you indulged in fraud and dishonesty in connection with the employer's business or property. (This is misconduct under S.O. 18(i)(a) of the aforesaid standing order)."

and, Charge No. 4 reads as follows :—

"Charge No. 4 : That while working as loading clerk in Kusunda Colliery you threatened Sri Prabhu Bhuiya, casual wagon loader that if he does not pay Rs. 600/- for inflating his attendance for July '81 he will not be allowed to work in future (This is misconduct under S.O. 18(i)(r) of the aforesaid standing orders).

Thus, it is seen that the allegation is that the concerned workman falsely inflated the attendance of Prabhu Bhuiya for July '81 from 24 to 46 and thereby indulged in fraud and dishonesty in connection with the employer's business and property which is a misconduct under Clause 18(i)(a) of the Standing Orders. I have already reproduced the provision of Clause 18(i)(a) of the Standing Orders. In his statement before the Enquiry Officer Prabhu Bhuiya has not stated anything regarding his attendance being inflated by the concerned workman in July '81 from 24 to 46. But he has stated that this is his complaint before the C.B.I. (marked Ext. P-1 in domestic enquiry). In cross-examination he has admitted that Jagdish Nonia prepared the attendance for the wages received in the month of July (81) and that in the month of July his attendance was 14. Thus, it is seen that he is making different statement with regard to his attendance at different times before the C.B.I. official he has stated that his attendance was 24 in the month of July, but in the domestic enquiry he has stated it to be 14. According to him it was Jagdish Nonia who prepared the attendance for the wages received in the month of July. Jagdish Nonia has stated in domestic enquiry that he recorded the attendance at the instance of the concerned workman. I have already stated that his evidence is not dependable since he has made different statement at different times. Besides, he is also a charge-sheeted workman and it is not beyond him to get out of the woods by laying blame entirely upon the concerned workman. Sri N. Banerjee has stated that in the absence of Jagdish Nonia the concerned workman used to record the attendance of workers. But there is no evidence on record to indicate that at the relevant time

Jagdish Nonia was absent or was on leave and the concerned workman recorded the attendance. Even Jagdish Nonia has stated that there was no wrong or false attendance recorded in the name of Prabhu Bhuiya in the month of July. This being the evidence, it is obvious that the management could not prove that the concerned workman actually inflated the attendance of Prabhu Bhuiya in the month of July. Hence, Charge No. 1 framed against the concerned workman for inflating the attendance of Prabhu Bhuiya and thereby indulging in fraud and dishonesty in connection with employer's business or property founders on the ground.

Now, I will advert to Charge No. 4 in which the concerned workman has been arraigned for having threatened Prabhu Bhuiya to the effect that if he did not pay him Rs. 600/- for inflated attendance of July '81 he would not be allowed to work in future. The concerned workman was simply a Loading Clerk. He has no authority, as I have pointed above, either to allow or not to allow any work to worker. It may be argued that Prabhu Bhuiya an illiterate man considered that the concerned workman was threatening him. But it must not be forgotten that although Prabhu Bhuiya was an illiterate person, he was fully conscious of mundane affairs and had his wits about him. He braced himself up to complain before the C.B.I. authorities and to accompany them to flash out the culprit. In the circumstances I do not consider that he was taken in by the threat, if at all made by the concerned workman. At the time of domestic enquiry he has simply stated that the concerned workman demanded money from him every month as he did from other casual workers. None of the casual workers has been examined by the management to lend circumstantial corroboration to the evidence of Prabhu Bhuiya. In the circumstances, I consider that this charge also is as porous as a leaky boat and must be considered un-sustainable.

15. This leaves us to Charge No. 3 only which reads as follows :

"Charge No. 3 : That while working as loading clerk in Kusunda colliery you demanded from Sri Prabhu Bhuiya, casual wagon loader an amount of Rs. 600/- as bribe for inflating his attendance for the month of July '81 and had actually received the said amount as bribe from Sri Prabhu Bhuiya on 11-8-81 at about 3 P.M. (when you were caught red-handed as a result of the trap laid by the SPE/CBI, Dhanbad Branch). (This is misconduct under S.O. 18 (i)(b) of the aforesaid standing orders).

The fact of C.B.I. having made well laid trap case in order to entrap the concerned workman and the fact of recovery of a sum of Rs. 600/- from the concerned workman are not disputed. According to the evidence of Sri Lakhi Prasad, Inspector, C.B.I. witness H. R. Kothari was instructed that he would accompany the complainant and would listen to the conversation between the concerned workman and the complainant and would also observe the giving and taking of bribe and that when giving and taking of bribe was over he would give signal by wiping his face with a hand-karchif. According to this witness this sequence of event took place. But Sri Kothari has not

been examined to vouch for the fact that he saw the occurrence of giving and taking of bribe. Besides, the management has not produced the seizer list to prove the fact that the same denomination and number of notes as recorded by the C.B.I. before entrapment was recovered from the concerned workman after his entrapment.

16. Admittedly, the C.B.I. launched a criminal prosecution against the concerned workman over the self-same occurrence. After in-depth investigation the C.B.I. submitted a final report in this case stating as follows :

"It was alleged in the F.I.R. that the accused—Harihar Ram Gupta, Attendance Clerk, Kusunda Colliery, B.C.C.L., was habitually demanding and occupying illegal gratification from various Casual Wagon Labourers and others and as such on 10-8-81, he demanded the bribe of Rs. 600 from the complainant—Sri Prabhu Bhuiya, for making his number of attendance more than his actual attendance. He also threatened him to the effect that if he (Bhuiya) will not pay him the aforesaid amount he will not be allowed to work in future on the basis of this written-complaint and a preliminary verification, this F.I.R. was lodged and a trap was laid on 11-8-81 after observing all the legal formalities and the accused was caught red handed while accepting the amount of Rs. 600 from the decoy, Prabhu Bhuiya.

Investigation into the above allegation revealed that the complainant was working as Casual Wagon Loader in Kusunda Colliery during the period in question and the accused was working as loading clerk in the same colliery. It was the duty of the accused to get the wagons/trucks placed at the colliery sidings, loaded by the permanent as well as Casual-Wagon Loaders in time ; so that no demurrage was charged by the Railway. For that it was provided under B.C.C.L. rules that a Casual Wagon loaders could be given extra attendance, if extra quantity of Coal/Coke was loaded by him in the wagon/truck.

It also came to light during investigation that the accused used to engage private loaders for loading the wagons/trucks in schedule time with an intention to save demurrage. As it was not possible to show-evidence of such private loaders on the rolls of BCCL and get the wages for them drawn, he, in consultation with other loading clerks, Shri Jagdish Noniya, Loading Supervisor—Sri Kamata Prasad Singh, used to show extra attendance against the names of Casual wagon loaders used to draw the wages in their names and after collecting the amount of such extra attendance distribute the same to the private wagon loaders or used to pocket the money as reimbursement, if already paid to the private labourers by him from his pocket. He also used to maintain a separate sheet of such extra attendance given to the Casual Wagon loaders and collect the amount accordingly Rs. 22 per attendance. During the period in question i.e. from 16-6-81 to 15-7-81 the complainant Shri Prabhu Bhuiya had worked only for 24 attendances and was shown in the attendance was given

to him extra and accordingly the accused had asked him to pay Rs. 600 being a round figure of Rs. 594-Rs. 22 per attendance.

No doubt the accused demanded Rs. 600 and was caught red handed by the raiding party while accepting the said amount of Rs. 600 from the complainant in presence of the witness, but it could not be established that the amount was accepted by him as illegal gratification. Though it came to light during investigation that the accused was not paying the entire amount, but it could not be provided to how much he used to pay to the private loaders and how much he used to retain with him. The act of the accused was thus not inviolation of any statutory law of land rather it was a violation of the administration of the BCCL as he engaged private loaders for loading the wagons/trucks, which was not admissible under BCCL rule for this lapse on this part the accused is being dealt with separately and thus, does not warrant any action in the Court of law.

It is, therefore, prayed that this report may kindly be accepted, case may kindly be ordered to close and accused may be discharged. Necessary orders may also be passed that the various documents seized in this case, be returned to the concerned persons to whom the same belongs or from whom the deposit it in same was seized."

The Court acted on this final report and discharged the concerned workman, accused in this case (Ext. W-1). As a matter of fact the truth of the facts found by the C.B.I. is also revealed from another document produced by the management. By letter dated 29-8-1981 the Personnel Manager, Kusunda Area, wrote to the Agent, Kusunda Colliery stating that he was directed by the C.B.I. personnel that Prabhu Bhuiya wanted to work as badli miner/loader in the colliery. The Personnel Manager had written that he might be allowed to work provided he was agreeable and put in an application. But the Agent had replied that the colliery was having acute shortage of wagon loaders and that they had asked 90 more wagon loaders and in the circumstances, he requested the Personnel Manager to re-consider his decision. This being the position, it appears that the colliery was having shortage of wagon loaders and in the circumstances, the probability of engaging private loaders for the purpose of loading cannot be ruled out. The case of the concerned workman is also that a large number of wagon loaders were engaged privately by the management to load wagons to avoid demurrage and for other reasons.

17. Much has been made of a document (marked P-6) in domestic enquiry. N. Banerjee, Safety Officer could not state in his earlier testimony before the Enquiry Officer as to who was the author of this document. Later, he was allowed to give evidence once again and he vouched for the fact that on verifi-

cation he came to know that it was in the handwriting of the concerned workman. Thus, it is seen that the Enquiry Officer has allowed this witness for the management to fill in the trail of lacune left by him in his earlier testimony. This practice is not at all salutary. Anyway, Sri N. Banerjee has not stated the materials he verified on the basis of which he could prove this document to be the handwriting of the concerned workman. Since basic material is not available his identification of this document is of no avail.

18. It is the case of the concerned workman that Prabhu Bhuiya paid him off loan he secured earlier from him on the date in question. He made a statement to this fact before the Enquiry Officer. Sri R. S. Murty Advocate for the management, has contended that it was not the case of the concerned workman that Prabhu Bhuiya paid him off the loan secured by him since the latter was not cross-examined on this point. It is too much to expect of concerned workman and his co-worker the sophistication of a professional lawyer. Anyway, the concerned workman has examined as many as three witnesses, namely, N. N. Prasad, Kishori Ram and Smt. Balkesia Kamin to vouch for the fact that Prabhu Bhuiya secured a loan of Rs. 600 from him (concerned workman). There is hardly any reason to disbelieve their evidence. Considering all these facts and circumstances I come to the conclusion that Charge No. 3 has not been proved against the concerned workman with any degree of assurance.

19. It appears that the Enquiry Officer found the concerned workman guilty of the charges levelled against him and the management, accepting the finding of the Enquiry Officer, dismissed him from service by order dated 9-1-1984 with effect from 10-1-1984. Since in my view the charges against the concerned workman has not been proved, it automatically follows that the order of dismissal was not justified and it should be set aside.

20. Accordingly, the following award is rendered—the action of the management of Kusunda Colliery of Messrs Bharat Coking Coal Limited, P.O. Kusunda, Distt. Dhanbad in dismissing Harihar Ram Gupta, Loading Clerk from service is not justified. The order of his dismissal from service is hereby set aside and the management is directed to reinstate him in service with effect from the date of reference i.e. 25-1-1985 with full back wages, and his absence during the period from 10-1-1984 to 24-1-1985 shall be treated as absence on leave without pay.

In the circumstances of the case I award no cost.

S. K. MITRA, Presiding Officer.

(No. L-20012/353/84-D.III.A/IV.A)

K. J. DYVA PRASAD, Desk Officer.

